

No. 13-20-00355-CV

**In the Court of Appeals for the
Thirteenth Judicial District of Texas
Edinburg Division**

FILED IN
13th COURT OF APPEALS
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KATHY S. MILLS
Clerk

HIDALGO COUNTY WATER IMPROVEMENT DIST. NO. 3,
Appellant,

v.

HIDALGO COUNTY WATER IRRIGATION DIST. NO. 1,
Appellee.

ON APPEAL FROM THE COUNTY COURT-AT-LAW No. 4,
HIDALGO COUNTY, TEXAS, THE HONORABLE FRED GARZA, JR., PRESIDING

APPELLANT'S EMERGENCY MOTION FOR TEMPORARY ORDERS

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**Counsel for Appellant
Hidalgo County Water
Improvement District
No. 3**

TO THE HONORABLE COURT OF APPEALS:

Hidalgo County Water Improvement District No. 3 (“Water District 3”), Appellant in the above-entitled and numbered cause, files the following Emergency Motion for Temporary Orders, and in support thereof would respectfully show:

A. Introduction

This appeal arises out of an eminent domain proceeding brought by Water District 3 to condemn an easement related to property owned by the Appellee herein, Hidalgo County Irrigation District No. 1 (“Irrigation District 1”). *See* Exhibit A-1 (first amended original petition in condemnation).¹ The Special Commissioners awarded \$1,900.00 to Irrigation District 1 as just compensation. Ex. A-2. Water District 3 paid the Award into the registry of the court. Ex. A-3. Under Section 21.021(a) of the Texas Property Code, this entitled Water District 3 to immediate possession of the condemned easement pending the outcome of litigation. Irrigation District 1 then filed an answer and statement of objections to the Award (exhibit A-4), followed by a plea to the jurisdiction asserting governmental immunity (exhibit A-5), while Water District 3 moved for issuance of a writ of possession under the Property Code (exhibit A-6).

¹The appellate record has been requested but not yet filed (the current deadline is October 2). In support of the instant motion, therefore, Water District 3 is attaching the Affidavit of Frank Weathered (Exhibit A), the purpose of which is to authenticate pertinent parts of the record.

Before ruling on Water District 3’s motion for issuance of writ of possession, the trial court granted Irrigation District 1’s plea to the jurisdiction and signed an order dismissing the case based on the unprecedented argument that local governmental entities, such as Irrigation District 1, enjoy governmental immunity in condemnation proceedings (the “Order of Dismissal”) (Ex. A-7). To the contrary, the law is exactly the opposite. *City of Conroe v. San Jacinto River Auth.*, 602 S.W.3d 444, 457-58 (Tex. 2020) (holding that governmental immunity does not apply to *in rem* proceedings); *City of Blue Mound v. Sw. Water Co.*, 449 S.W.3d 678, 683 (Tex. App.-Fort Worth 2014, no pet.) (“A condemnation action in Texas is an *in rem* proceeding”).

Within a few days of the erroneous Order of Dismissal, therefore, Water District 3 filed a notice of appeal. In the trial court, Water District 3 also filed an emergency motion for writ of possession pending the appeal (exhibit A-8). After conducting a conference (not an actual hearing) with the attorneys, the court sent out an email stating: “[t]his case is dismissed due to the fact that this Court ruled that it has no subject matter jurisdiction. Therefore, the Court will not grant any further relief requested by any party.” *See* Ex. A-9.

Pursuant to TEX. R. APP. P. 24.4, Water District 3 is now seeking temporary orders awarding Water District 3 immediate possession of the condemned easement pending the appeal; in the alternative, instructing the trial court to immediately

award Water District 3 possession of the condemned easement pending the appeal; and in the further alternative, instructing the trial court to immediately conduct a hearing on Water District 3's emergency motion for writ of possession, and to rule on the merits of the motion.

B. Background

The underlying eminent domain proceeding relates to the extension of Water District 3's raw water pipeline ("the Pipeline") currently being constructed in conjunction with the extension of Bicentennial Boulevard in the City of McAllen, Texas ("the City").² In August 2019, the City granted Water District 3 an easement for the Pipeline to be installed within the public right-of-way of Bicentennial Boulevard (*see* Exhibit A-8(D-1)), and the City and Water District 3 executed an interlocal agreement governing construction of the Pipeline in that same public right-of-way. *See* Exhibit A-8(D-2).³ In short order, Water District 3 secured a crossing agreement from Hidalgo County Irrigation District No. 2, an affected landowner

² The construction of both the pipeline and Bicentennial Boulevard began in January 2020 pursuant to an *Interlocal Cooperation Agreement* between Water District 3 and the City and a construction contract between the City and its contractor, Texas Cordia Construction ("TCC"). Over the last eight months, the contractor has installed approximately 3,100 feet of the Pipeline. To date, Water District 3 has spent more than \$1,000,000 on this project. In no more than a few days, the contractor will have installed the Pipeline to a location at which it would begin crossing under Irrigation District 1's canal right-of-way using the subsurface easement which is the subject of this condemnation proceeding. *See* Affidavit of Frank Ferris, P.E., the engineer for Water District 3, attached to this motion as Exhibit A-8(D).

³ In addition to its right to construct the Pipeline pursuant to the easement and interlocal agreement with the City, Water District 3 has a statutory right to install the Pipeline in the public right-of-way of Bicentennial Boulevard under Section 49.220 of the Texas Water Code.

along the Pipeline's route. The only other affected landowner along the route is Irrigation District 1.

In November 2019, following numerous efforts to secure permission to cross under Irrigation District 1's property, and after Irrigation District 1 had repeatedly refused to consent, Water District 3 was forced to file the underlying eminent domain proceeding, seeking a 0.05-acre subsurface-only easement located within the public right-of-way of Bicentennial Boulevard and the right-of-way of Irrigation District 1's canal. *See* Ex. A-1. The court-appointed Special Commissioners assessed the damages associated with the acquisition and awarded Irrigation District 1 \$1,900.00 as adequate compensation for the subsurface easement rights. Ex. A-2. Water District 3 promptly tendered the amount of the Award into the registry of the Court and satisfied all statutory requirements necessary to be entitled to immediate possession of the condemned easement pending the outcome of the litigation. Ex. A-3. Instead of granting Water District 3 possession, however, the trial court dismissed the case for want of jurisdiction. Ex. A-7.

As Water District 3 argued in its response and sur-reply to Irrigation District 1's plea to the jurisdiction, there is simply no authority granting irrigation districts – or any local governmental entity for that matter – governmental immunity in eminent domain proceedings. Therefore, Water District 3 filed a notice of appeal of the Order of Dismissal.

C. The Notice of Appeal Supersedes the Order of Dismissal

Enforcement of the Order of Dismissal is suspended pending the appeal. Water District 3 is a duly created Water Control and Improvement District organized under the laws of the State of Texas, having all powers, rights, privileges and functions conferred by general law upon any district created pursuant to Article 16, Section 59 of the Constitution of the State of Texas, and those specific powers enumerated in Chapter 49 and Chapter 51 of the Texas Water Code. Therefore, no supersedeas bond or other form of security is necessary to suspend enforcement of the Order of Dismissal. TEX. WATER CODE § 49.222(b); TEX. CIV. PRAC. & REM. CODE § 6.003(b)(1); TEX. R. APP. P. 25.1(h)(2). Instead, the filing of the Notice of Appeal, in and of itself, suspends enforcement of the Order of Dismissal.⁴

D. This Motion for Temporary Orders Presents an Emergency

While Water District 3 is appealing the Order of Dismissal, events are occurring that will likely destroy the subject matter of the appeal (and the litigation altogether), unless Water District 3 is awarded possession of the condemned easement pending the appeal.

⁴ A true and correct copy of the 1921 Commissioners' Court order creating Water District 3 is attached hereto as Exhibit A-8(B) and is incorporated herein by reference. *See also* Exhibit A-8(C) (true and correct copy of 1926 resolution converting Water District 3 from a water control district to a water control and improvement district and referring to Water District 3 as "Hidalgo County Water Improvement District No. 3.")

On June 17, 2020, almost an entire year after Water District 3 secured its own easement from the City, Irrigation District 1 and the City entered into an “Easement in Gross Agreement,” recorded as Document No. 3121836 in the Official Records of Hidalgo County, Texas (“the Gross Agreement”). In the Gross Agreement, Irrigation District 1 conveyed an easement to the City for 0.40 acres out of Irrigation District 1’s canal right-of-way “for the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of the road, sidewalks, curb and gutter, commonly known as the Bicentennial Boulevard project.” A true and correct copy of the Gross Agreement is attached hereto as Exhibit A-8(D-3).

Although Bicentennial Boulevard is a public roadway, and the Gross Agreement conveys an easement for the public right-of-way, Irrigation District 1 and the City are using the Gross Agreement to torpedo Water District 3’s right to install the Pipeline in that same area. First, the Gross Agreement relocates the eastern boundary of Bicentennial Boulevard right-of-way so that both Water District 3’s easement from the City and the condemned easement are no longer within the public right-of-way of Bicentennial Boulevard. Second, Irrigation District 1 and the City included in the Gross Agreement certain (impermissible) restrictions on the use of the public’s right-of-way designed to prohibit installation of the Pipeline. For example, the Gross Agreement prohibits “installation of any pipeline or any underground facility on, in or under [Irrigation District 1’s] siphon,” and further

provides that if the City “installs or allows the installation of any pipeline or underground infrastructure on, in or under [Irrigation District 1’s] siphon, the Easement granted here [*i.e.*, Bicentennial Boulevard and its right-of-way] is immediately extinguished and thereafter null and void ab initio.” The obvious target of these activities is the Pipeline and Water District 3’s right, just like any other utility, to install utility infrastructure in a public right-of-way, as well as its contractual right to construct the Pipeline in the Bicentennial Boulevard right-of-way. Third, the Gross Agreement provides that the easement and related rights are an “exclusive easement in gross for the benefit of City.” Again, this will deprive various parties, including Water District 3, of their common law and statutory rights to install utilities and other facilities in the public right-of-way of the roadway in the vicinity of the easement Water District 3 is seeking to condemn in the instant proceeding. The Gross Agreement provides the City with an easement for the right-of-way of a public roadway. Restrictions like those included in the Gross Agreement by the City and Irrigation District 1 which restrict the use of that public right-of-way are contrary to public policy and void.⁵

The City is continuing to construct the extension of Bicentennial Boulevard over the route of the Pipeline. If Water District 3 is deprived of its statutory right to

⁵ *Harlingen Irrigation District Cameron County No. 1 v. Caprock Communications Corp.*, 49 S.W.3d 520, 532 (Tex. App.-Corpus Christi 2001, pet. denied).

possess the condemned easement and to construct its Pipeline in the public right-of-way of a public roadway pending this appeal, the City will continue and complete construction of the Bicentennial Boulevard extension and Water District 3 will be unable to install the rest of the Pipeline without incurring prohibitive cost increases as described in the attached Affidavit of Frank Ferris, P.E. (Exhibit A-8(D)).

E. The Status Quo at the Time of the Order of Dismissal was that Water District 3 had a Statutory Right to Immediate Possession of the Condemned Easement

Section 21.021(a) of the Texas Property Code governs a condemnor's right to possess property *pending further litigation* in condemnation actions. It mandates that, after Special Commissioners have made an award, a condemnor is entitled to take *immediate* possession of a condemnee's property pending the results of further litigation if the condemnor:

- 1) deposits all amounts awarded by the Special Commissioners into the Court's Registry subject to the order of the property owner;
- 2) deposits with the court a surety bond, issued by a surety company qualified to do business in this State, in the amount of money awarded by the Special Commissioners as damages, conditioned to secure the payment of an award of damages by the court in excess of the award of the Special Commissioners; and
- 3) executes a cost bond that has two or more good and solvent sureties approved by the judge of the court in which the proceeding is pending and conditioned to secure the payment of additional costs that may be awarded to the property owner by the trial court or on appeal.

TEX. PROP. CODE § 21.021(a)(1)-(3). Section 21.021(c) goes on to provide that if the condemning entity is a water improvement district, such as Water District 3, it is “not required to deposit a bond or the amount equal to the award of damages under Subdivisions (2) and (3) of [21.021] (a).”

The requirements outlined in section 21.021(a) are exhaustive; upon satisfaction, the condemning authority is entitled to immediate possession, which may be effectuated by issuance of a writ of possession.⁶ The decision to comply with section 21.021(a) and to take immediate possession is subject to the sole

⁶ See *City of Austin v. Whittington*, 384 S.W.3d 766, 773 (Tex. 2012) (“During that litigation, the condemnor may take possession of the condemned property by paying the damages determined by the special commissioners and executing a bond approved by the court to secure payment of potential additional costs that could be awarded at trial or on appeal.”); *Hooks v. Fourth Court of Appeals*, 808 S.W.2d 56, 60–61 (Tex. 1991) (orig. proceeding) (“A condemnor takes constructive possession of property when it deposits the commissioners’ award into the registry of the court”); *Murray v. Devco, Ltd.*, 731 S.W.2d 555, 557 (Tex. 1987) (“After the Commissioners have made an award in a condemnation proceeding, a condemnor may take possession of the condemned property pending litigation if the condemnor pays the award to the property owner or the court and executes a bond.”); *Anderson v. Teco Pipeline Co.*, 985 S.W.2d 559, 563 (Tex. App.—San Antonio 1998, pet. denied) (“After special commissioners have made an award, the condemnor may take possession of the disputed property pending further litigation if it deposits the amount of the award into the court’s registry.”); *Houston Lighting & Power Co. v. Klein Indep. Sch. Dist.*, 739 S.W.2d 508, 518–19 (Tex. App.—Houston [14th Dist.] 1987, writ denied); *Houston, B. & T. R. Co. v. Hornberger*, 141 S.W. 311, 313 (Tex. Civ. App.—Galveston 1911, no writ) (discussing the former Article 4471 of the Revised Statutes of the state of Texas of 1895); *Russell v. State*, Cause No. 02-14-00178-CV, 2015 Tex. App. LEXIS 3843, 2015 WL 1743745, at *3 (Tex. App.—Fort Worth Apr. 16, 2015, no pet.) (“A condemnor that complies with property code section 21.021 is rightfully in possession of the property and cannot be guilty of trespass.”); *State v. Gordon*, Cause No. 14-94-00868-CV, 1996 Tex. App. LEXIS 605, 1996 WL 65405, at *4 (Tex. App.—Houston [14th Dist.] Feb. 15, 1996, writ denied);.

discretion of the condemnor, and a condemnee has no power to interfere with that right.⁷

The primary purpose of section 21.021 is to allow a party “to possess the condemned property pending the determination of fact issues through the judicial process.”⁸ The right to immediate possession stands even while a property owner challenges a condemnor’s eminent domain authority.⁹

In the case at bar, while Irrigation District 1 challenged Water District 3’s eminent domain authority in its Original Answer and Statement of Objections, the trial court decided instead to dismiss the case for want of jurisdiction based upon governmental immunity. This distinction, however, does not affect the status quo at the time the Order of Dismissal was signed: Water District 3 was entitled – and still is because of the notice of appeal – to immediate possession of the condemned easement pending the final disposition of the litigation. *E.g. In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) (defining status quo as the “last, actual, peaceable,

⁷ *Gordon*, 1996 WL 65405, at *4.

⁸ *In re Tex. Rice Land Partners, Ltd.*, 402 S.W.3d 334, 339 (Tex. App.—Beaumont 2013, no pet.).

⁹ *See Denbury Green Pipeline-Texas, LLC v. Tex. Rice Land Partners, Ltd.*, 510 S.W.3d 909, 912 (Tex. 2017) (“While the suit was pending, Denbury Green took possession of Texas Rice’s property pursuant to section 21.021(a) of the Texas Property Code, which allows a condemnor to take possession even while the property owner challenges the condemnor’s eminent domain authority. Denbury Green then surveyed for and constructed the Green Line.”) (internal citation omitted); *Hornberger*, 141 S.W. at 314 (“The right is expressly given the corporation seeking to condemn to enter upon and take possession of the property ‘pending litigation,’ and the right of the landowner to his writ of restitution . . . only accrues when upon a ‘final decision of the case’ it is determined that the right to condemn the property does not exist.”).

non-contested status which preceded the pending controversy.”). The “pending controversy” is whether Irrigation District 1 is entitled to governmental immunity in condemnation proceedings. In turn, Water District 3’s absolute statutory right to immediate possession of the condemned easement pursuant to Section 21.021 was the “last, actual, peaceable, non-contested status which preceded the pending controversy.” This is what the status quo should therefore be for purposes of this emergency motion.¹⁰

Moreover, Irrigation District 1 has an adequate legal remedy in the ultimate event Water District 3 is not entitled to the easement. If this Court determines that Irrigation District 1 does not have governmental immunity, the case will be remanded to determine the merits. If it is ultimately decided at trial that Water District 3 does not have eminent domain authority – or if this Court affirms the Order of Dismissal and there is no trial - Irrigation District 1’s legal remedy for Water District 3’s possession during the litigation is found in section 21.044 of the Property Code. That section allows the trial court to award the property owner damages that resulted from the condemnor’s temporary possession. The Texas Supreme Court has held that this procedural safeguard is sufficient to protect property owners like

¹⁰ Water District 3’s statutory right under section 21.021 to immediate possession pending the ultimate outcome of the condemnation proceeding is not contestable. The very purpose of the statute is to award the condemnor possession *during the litigation*. Until the litigation is concluded, therefore, Water District 3’s statutory right of possession is continuous and ongoing. The litigation includes this appeal.

Irrigation District 1, who challenge an entity's eminent domain authority after the entity has already taken possession.¹¹ Said another way, a condemnee's right to damages under section 21.044 is an adequate remedy at law, and a condemnee is not entitled to a *de facto* injunction preventing a condemnor from taking possession by merely alleging that the condemnor lacks eminent domain authority.¹²

F. This Court has Authority to Issue Temporary Orders to Protect the Subject Matter of the Appeal

On appeal from a final judgment, the trial court retains continuing jurisdiction to rule on matters affecting suspension of the judgment pending appeal. TEX. R. APP. P. 24.3. In turn, the court of appeals may review the trial court's post-judgment

¹¹ See *Harris County v. Gordon*, 616 S.W.2d 167, 169 (Tex. 1981) ("The Court of Civil Appeals wrote that the County did not have the authority to condemn for a fee simple, and on this basis granted the temporary injunction. However, this action ignores the landowner's remedy provided by Article 3268(3). This statutory remedy provides for damages to the landowner for the use of the land when the condemnor does not have the right to condemn. The only limit on this award is the value of the property. The Gordons have an adequate remedy at law if it is later determined that Harris County did not have authority to condemn for a fee simple. Therefore, the Court of Civil Appeals erred in granting the injunction on the grounds stated.").

¹² See *Harris County*, 616 S.W.2d at 169; *In re JDN Real Estate-McKinney, L.P.*, 211 S.W.3d 907, 915–16 (Tex. App.—Dallas 2006, orig. proceeding) ("Pursuant to section 21.044(a) of the Texas Property Code, if a condemnor took possession of property pending litigation and did not have the right to condemn that property, the court may award the property owner the damages that resulted from the condemnor's temporary possession. This statutory remedy provides for damages to the property owner for the use of the property when the condemnor does not have the right to condemn that property. As a result, this statutory remedy provides a property owner with an adequate remedy by appeal if it is later determined the condemnor did not have the authority to condemn the property.") (internal citations omitted); *Gordon*, 1996 WL 65405, at *4 ("[T]he property code permits a condemnor, in its sole discretion, to elect to make a deposit equal to the commissioners' award and take immediate possession of the premises, instead of waiting for the jury's decision."); *City of Houston*, Cause No. B14-85-646-CV, 1985 Tex. App. LEXIS 12630, at *8 (Tex. App.—Houston [14th Dist.] Dec. 19, 1985, no writ).

rulings. TEX. R. APP. P. 24.4(a). The court of appeals has the further power to “issue any temporary orders necessary to preserve the parties’ rights.” *Id.* at (c). A motion for temporary orders in the court of appeals “must be heard at the earliest practicable time.” *Id.* at (d).

CONCLUSION

Prior to the Order of Dismissal, Water District 3 strictly complied with Section 21.021 of the Property Code and was entitled, without contest and as a matter of law, to take immediate possession of the condemned easement pending further litigation, including the appeal. Water District 3 has also complied with the rules governing perfection of appeal by a governmental entity. Specifically, Water District 3 has timely filed a notice of appeal, the effect of which is to suspend the Order of Dismissal pending the appeal. Accordingly, despite the trial court’s email to the contrary, the Order of Dismissal has been placed “on hold.”

That said, the trial court has continuing jurisdiction, as it would with any final judgment on appeal, to rule on matters affecting suspension (supersedeas) of the Order of Dismissal. Unless Water District 3 takes immediate possession of the condemned easement, its rights of eminent domain risk destruction during the course of the appeal. The trial court therefore erroneously refused to grant Water District 3’s motion for issuance of writ of possession pending the litigation (including the appeal).

PRAYER

Appellant Hidalgo County Water Improvement District No. 3 respectfully prays that this Court issue temporary orders awarding possession of the condemned easement to Water District 3 pending the outcome of the appeal. In the alternative, Water District 3 requests that the Court instruct the trial court to immediately issue a writ of possession to Water District 3. Further in the alternative, Water District 3 asks that the trial court be ordered to immediately conduct a hearing on the merits of Water District 3's Emergency Motion for Writ of Possession and to make a ruling. Water District 3 asks for all other relief, at law or in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

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**ATTORNEYS FOR APPELLANT HIDALGO COUNTY WATER
IMPROVEMENT DISTRICT NO. 3**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this filing was served on the following counsel of record via the Court's electronic filing system on August 27, 2020:

Daniel G. Gurwitz
Atlas Hall & Rodriguez, L.L.P.
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McAllen, TX 78501
dgurwitz@atlashall.com

/s/ Frank Weathered
Frank Weathered

No. 13-20-00355-CV

**In the Court of Appeals for the
Thirteenth Judicial District of Texas
Edinburg Division**

HIDALGO COUNTY WATER IMPROVEMENT DIST. NO. 3,

Appellant,

v.

HIDALGO COUNTY WATER IRRIGATION DIST. NO. 1,

Appellee.

STATE OF TEXAS

§

§

COUNTY OF NUECES

§

AFFIDAVIT OF FRANK WEATHERED

BEFORE ME, the undersigned official, on this day appeared Frank Weathered, who is personally known to me, and first being duly sworn according to law upon his oath deposed and said:

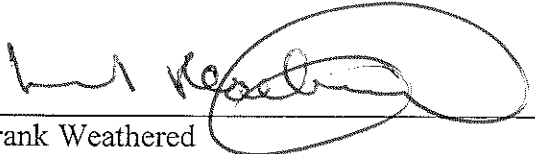
“My name is Frank Weathered. I am over the age of 18 and fully competent to make this Affidavit. The statements contained in this Affidavit are true and correct and based on the personal knowledge I have gained as one of the attorneys of record for Appellant Hidalgo County Water Improvement District No. 3 (“Water District 3”).

“Attached to this Affidavit are true and correct copies of the following original matters either on file (exhibits 1-8) or generated by the trial court (exhibit 9) in Cause No. CCD-0517-D; *Hidalgo County Water Improvement Dist. No. 3 v. Hidalgo County Irrigation Dist. No. 1*; in the County Court-at-Law No. 4 of Hidalgo County, Texas:

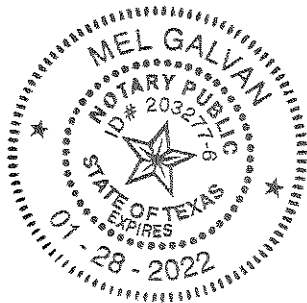
1. Water District 3’s First Amended Petition in Condemnation;

2. Special Commissioners' Award;
3. Official Receipt for Payment of Award;
4. Condemnee's Answer and Written Statement of Objections;
5. Condemnee's Plea to the Jurisdiction;
6. Water District 3's Motion for Issuance of Writ of Possession;
7. Order of Dismissal;
8. Water District 3's Notice of Temporary Suspension of Order of Dismissal and Emergency Motion for Immediate Temporary Possession of Easement Pending Appeal; and
9. Email from County Court 4, dated August 24, 2020, and addressed to counsel of record."

Further affiant sayeth not.


Frank Weathered

SWORN TO AND SUBSCRIBED BEFORE ME, on this the 27th day of August, 2020.




NOTARY PUBLIC, State of Texas

Seal/Stamp

CAUSE NO. CCD-0517-D

HIDALGO COUNTY WATER	§	EMINENT DOMAIN PROCEEDING
IMPROVEMENT DISTRICT NO. 3	§	
Plaintiff,	§	
	§	
V.	§	IN THE COUNTY COURT AT LAW NO. 1
	§	
HIDALGO COUNTY IRRIGATION	§	
DISTRICT NO. 1	§	
Defendant.	§	HIDALGO COUNTY, TEXAS

CONDEMNOR'S FIRST AMENDED PETITION FOR CONDEMNATION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Hidalgo County Water Improvement District No. 3 (hereinafter referred to as "Condemnor"), a Water Control and Improvement District with eminent domain authority, and files this First Amended Petition for Condemnation, seeking easement rights from Hidalgo County Irrigation District No. 1 (hereinafter referred to as "Condemnee"), and respectfully shows the Court as follows:

Discovery

1. If and when this proceeding becomes a judicial proceeding, discovery shall be conducted under Rule 190.4 (Level 3) of the Texas Rules of Civil Procedure. Condemnor seeks monetary relief of \$100,000 or less and non-monetary relief. The damages and relief sought are within the jurisdictional limits of the Court. Because this proceeding arises under Chapter 21 of the Texas Property Code, Texas Rule of Civil Procedure 169 regarding the expedited actions process does not apply to this suit. TEX. R. CIV. P. 169(a)(2).

Jurisdiction and Venue

2. Venue is proper in this County pursuant to Section 21.013 of the Texas Property Code.

Parties

3. Condemnor is a duly created Water Control and Improvement District, having been converted from a Water Improvement District in 1926, and having all powers, rights, privileges and functions conferred by general law upon any district created pursuant to Article 16, Section 59, of the Constitution of the State of Texas, and those specific powers enumerated in Chapter 49 and Chapter 51 of the Texas Water Code. Condemnor has the rights and powers, among others, to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside Condemnor's boundaries any and all land, works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of Condemnor or purposes authorized by law. In accordance with Section 49.222 of the Texas Water Code, Condemnor has the right to acquire by condemnation any and all property necessary or convenient to the exercise of its powers, rights, privileges, and functions conferred upon it. Properly interpreted, Section 49.222 allows for the condemnation of both public and private property and constitutes a waiver of immunity to the extent that sovereign or governmental immunity is applicable in a condemnation case. Condemnor's principal office and place of business is in Hidalgo County, Texas.

4. Condemnor is informed and believes, and so alleges, that the following Condemnee holds or claims some interest in or title to the property described herein, and may be served with citation and/or notice as follows:

- a. Hidalgo County Irrigation District No. 1, c/o Rusty McDaniel, General Manager, 1904 N. Expressway 281, Edinburg, Texas, 78542.¹

Condemnor reserves the right to add the names of any such additional landowners, lienholders, easement holders, or claimants, whose interest may subsequently appear and to condemn the interest of each of such other parties as may subsequently appear for the purposes stated herein.

Landowner Bill of Rights

5. Condemnor brings this action pursuant to the pertinent provisions of Section 21.001 through 21.065, both inclusive, of the Texas Property Code, as amended. Condemnor has provided the property owner with the bill of rights statement in accordance with Section 21.0112.

Public Use and Necessity for Condemnation

6. Pursuant to the powers and duties granted to and imposed upon it, Condemnor, by a resolution of its Board of Director (the “Resolution”), has determined that there exists a public necessity for, and has determined that it is necessary to acquire by condemnation or otherwise, subsurface easement rights in and under property owned by Condemnee, as described and more particularly set out below. In order (i) to provide continuous and adequate retail water service to customers within the boundaries of Condemnor, as well as the sale of surplus water to customers, including other districts, outside the boundaries and in the vicinity of the District and (ii) to pump and deliver irrigation water to other districts in the vicinity, a public necessity exists for the acquisition of subsurface easement rights in and under Condemnee’s property in order to accomplish the public purpose of constructing, operating, and maintaining a new public water pipeline and any necessary related appurtenances and improvements. This is the public use for which Condemnor intends to acquire the easement rights described in this petition.

¹ As the owner of the property at issue in this case, Hidalgo County Irrigation District No. 1 is a necessary party to this action in accordance with Section 21.012 of the Texas Property Code. As such, any immunity that could be asserted, to the extent applicable in this case, has been waived.

Property Rights Sought

7. Condemnor seeks and condemns for a ten foot wide (10') exclusive and perpetual subsurface easement for the purpose of installing, constructing, maintaining, operating, repairing, rebuilding, relocating, upgrading, replacing, removing and abandoning one pipeline of a nominal forty-eight inch (48") diameter encased in a nominal sixty-six inch (66") diameter steel casing, along with any necessary appurtenances thereto (the "Pipeline Facilities"), for the purposes of transporting raw water in and under a portion of land owned by Condemnee, more particularly described and depicted in the attached Exhibit "A" (referred to herein as the "Easement Tract").

8. Condemnor shall install the Pipeline Facilities via bore from adjacent lands and is not seeking to acquire any rights to access the surface of the Easement Tract. The Pipeline Facilities shall be installed at a depth of at least five feet (5') below the bottom of the double seventy-two inch (72") siphons located in the Easement Tract. The foregoing notwithstanding, Condemnor shall have the right to select the exact location of the Pipeline Facilities within the Easement Tract.

Rights Retained by Condemnee

9. Condemnee shall retain the right to use the Easement Tract for any and all purposes not inconsistent with the rights being acquired by Condemnor herein. All oil, gas, and other minerals and water rights owned by Condemnee in, on, and under the Easement Tract shall be reserved to Condemnee; provided, however, Condemnee shall not be permitted to drill or excavate for oil, gas, other minerals, or water on the surface of the Easement Tract, but Condemnee may extract oil, gas, other minerals, or water from and under the Easement Tract by directional drilling or other means which do not interfere with or disturb Condemnor's use of the Easement Tract.

Bona Fide Offer

10. Condemnor, acting by and through its duly authorized agents, has made a bona fide offer to voluntarily acquire by purchase, and has offered to pay such reasonable damages, if any, as might result from the acquisition and use of, the easement rights described herein. Condemnor's bona fide offer comported in all respects with Section 21.0113 of the Texas Property Code.

11. Condemnor has been unable to agree with the Condemnee upon the value of the easement rights sought in this condemnation action and the damages, if any, to the remainder of Condemnee's property. Accordingly, it has become necessary to institute this proceeding. All conditions precedent to instituting this condemnation proceeding have occurred or have been performed.

Texas Property Code Disclosure

12. Pursuant to TEX. PROP. CODE § 21.023, the Condemnee or the Condemnee's heirs, successors, or assigns may be entitled to:

- a. repurchase the property under Subchapter E of Chapter 21 of the Texas Property Code; or
- b. request from Condemnor certain information relating to the use of the acquired property and any actual progress made toward that use; and
- c. the repurchase price is the price paid to Condemnee by Condemnor at the time Condemnor acquired the property through eminent domain.

WHEREFORE, Condemnor prays that the Court forthwith appoint three (3) disinterested real property owners who reside in this County as Special Commissioners as required by law; appoint two alternate Special Commissioners; provide the parties with fourteen (14) days from

signing the Order of Appointment to strike a commissioner pursuant to section 21.014 of the Texas Property Code; upon the appointment of the Commissioners and their acceptance thereof and qualification according to law, that the Commissioners promptly set a time and place for hearing in accordance with the law and that notice in writing of the time and place selected for the hearing be issued by the Commissioners to each of the parties hereto; upon the issuance and service of such notice, a hearing be held in accordance therewith and upon such hearing that the Commissioners assess the actual damages, if any, that will be sustained by Condemnee by the aforesaid condemnation and thereafter reduce their decision to writing, assessing the damages, if any, and costs according to law, and that they date and sign their decision and file it with the Court; that thereafter a Judgment of Condemnation be entered by the Court vesting in Condemnor the easement rights as described and set forth above; Condemnor further prays that upon payment into the Registry of this Court of the amount awarded Condemnee by the Special Commissioners, Condemnor have a Writ of Possession issued in its behalf and such other process necessary to enforce the decision of the Special Commissioners and Judgment of Condemnation; and Condemnor be granted costs of suit and such other and further relief, general and special, at law or in equity, as to which it may be justly entitled.

Respectfully submitted,

JACKSON WALKER L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
512-236-2000
Fax No. 512-236-2002
Email - banderson@jw.com



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Harlingen, Texas 78550
(956) 423-7200
Fax (956) 423-7999
email - chagofuentes@rkwlaw.com

Randolph K. Whittington – State Bar No.
21404500

ATTORNEYS FOR HIDALGO COUNTY
WATER IMPROVEMENT DISTRICT NO. 3

CERTIFICATE OF SERVICE

This is to certify that on the 29th day of June 2020, a true and correct copy of the foregoing has been forwarded to:

Via Certified Mail Return Receipt Requested

Mr. Rusty McDaniel
General Manager
Hidalgo County Irrigation District No. 1
1904 N. Expressway 281
Edinburg, Texas 78542

Via E-service

Daniel G. Gurwitz
Atlas Hall & Rodriquez, LLP
818 Pecan
McAllen, Texas 78501
dgurwitz@atlashall.com



Brad Anderson

EXHIBIT A

Revised
21 October 2019**METES AND BOUNDS
0.05 ACRE TRACT OUT OF
HIDALGO COUNTY IRRIGATION DISTRICT NO. 1 RIGHT OF WAY**

Being a 0.05 Acre Tract out of Hidalgo County Irrigation District No. 1 Right of way out of Lot 9 and Lot 12, Block 278, Texas Mexican Railway Company Survey, recorded in Volume 24, Pages 170-171, Deed Records of Hidalgo County, Texas; said 0.05 Acre Tract being more particularly described as follows:

COMMENCING at the Northeast corner of Lot 60, La Floresta Subdivision Phase 1, recorded in Volume 55, page 170, Map Records of Hidalgo County, Texas and being on a curve to the left, for an angle point; (Having Coordinate values of X = 1075482.8186 Y = 16631372.6748 of the Texas State Plane Coordinate System, South Zone, NAD 83)

THENCE along said curve to the left having a radial bearing of North 73 Deg. 55 Min. 31 Sec. West, a Radius of 1000.00 Feet, having an Arc Length of 60.49 Feet, a delta angle of 03 Deg. 27 Min. 57 Sec., with a Chord bearing of North 14 Deg. 20 Min. 30 Sec. East and a Chord Distance of 60.48 Feet to a point on the South right of way of Hidalgo County Irrigation District No. 1;

THENCE along the South Right of way of Hidalgo County Drainage District No. 1, South 62 Deg. 04 Min. 10 Sec. East a distance of 96.37 Feet to a 1/2 inch iron rod with plastic cap stamped MEDINA 5719 set, for the Southwest corner and **POINT OF BEGINNING** of the centerline herein described; (Having coordinate values of X = 1075582.9442 Y = 16631386.1329 based on the Texas State Plane Coordinate System, South Zone, NAD83);

1) **THENCE** leaving the South Right of way of Hidalgo County Irrigation District No. 1, **North 25 Deg. 32 Min. 06 Sec. East** a distance of **198.39 Feet** to a 1/2 inch iron rod with plastic cap stamped MEDINA 5719 set on the North Right of way of Hidalgo County Drainage District No. 1, for the Northwest corner of the tract herein described;

2) **THENCE** along the North Right of way of Hidalgo County Irrigation District No. 1, **South 56 Deg. 59 Min. 52 Sec. East** a distance of **10.09 Feet** to a 1/2 inch iron rod with plastic cap stamped MEDINA 5719 set, for the Northeast corner the tract herein described;

3) **THENCE** leaving the North Right of way of Hidalgo County Irrigation District No. 1, **South 25 Deg. 32 Min. 06 Sec. West** a distance of **161.16 Feet** to the point on the South Right of way of Hidalgo County Irrigation District No. 1 and being the North boundary of Lot 16A and 17A, Timberhill Villa No. 4, recorded in Volume 27, Page 146A, Map Records of Hidalgo County, Texas, for a corner of the tract herein described;

4) **THENCE** along the South Right of way of Hidalgo County Irrigation District No. 1 and along the North boundary of Timberhill No. 4, **North 56 Deg. 58 Min. 52 Sec. West** a distance of **1.01 Feet** to a 1/2 inch iron rod found for the Northwest corner of said Lot 16A and 17A, Timberhill Villa No. 4 and a corner of the tract herein described;

5) **THENCE** along the West boundary of Lot 16A and 17A, Timberhill Villa No. 4, **South 08 Deg. 47 Min. 38 Sec. West** a distance of **3.47 Feet** to a point, for a corner of the tract herein described;

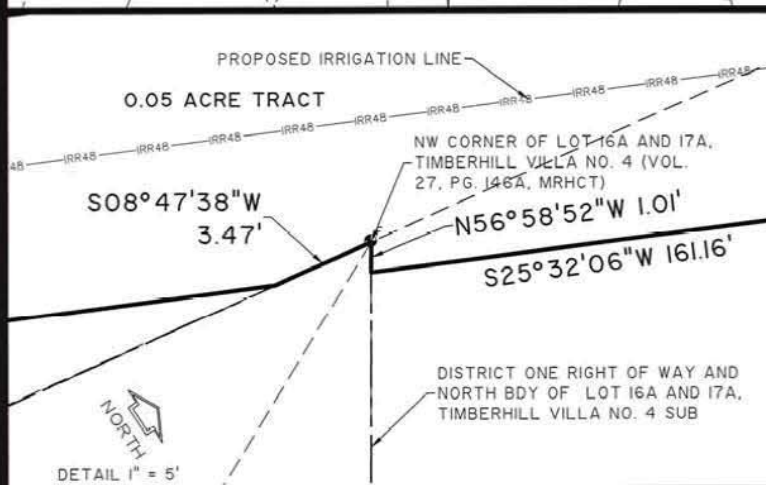
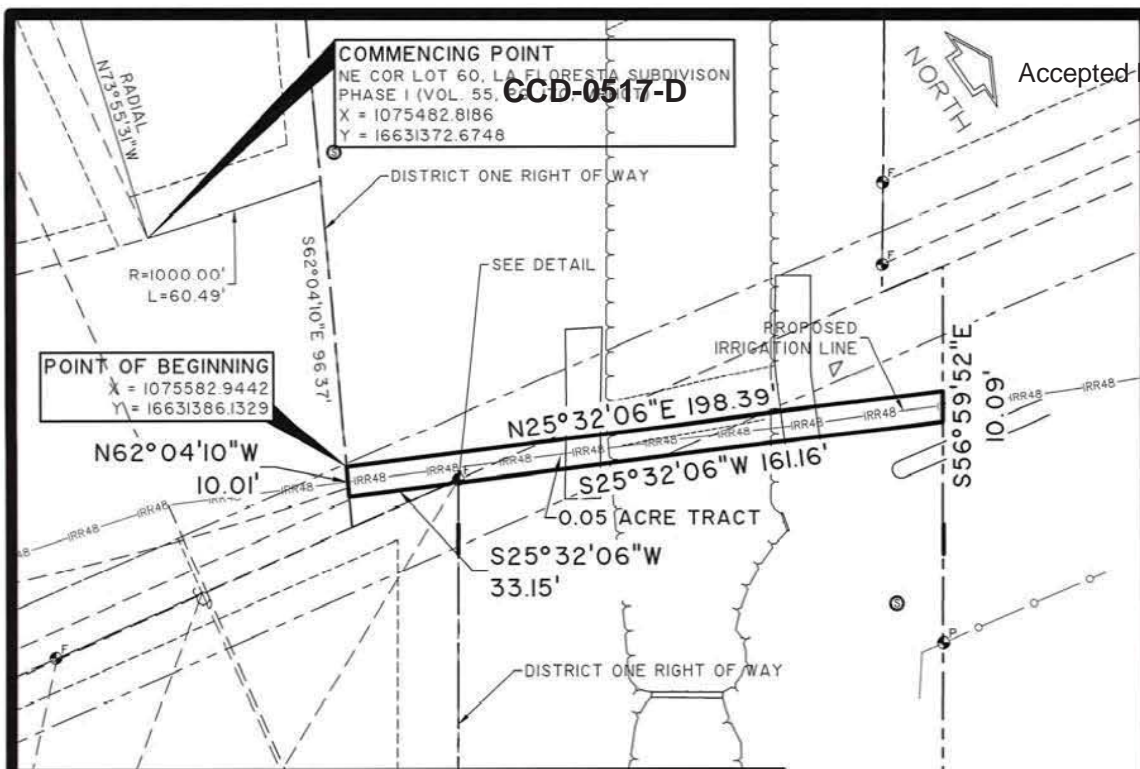
6) **THENCE** along the South Right of way of Hidalgo County Irrigation District No. 1, **North 62 Deg. 04 Min. 10 Sec. West** a distance of **10.01 Feet** the **POINT OF BEGINNING**; Containing 0.05 Acre within these metes and bounds.

Basis of bearings on this metes and bounds are as per Texas Sate Plane Coordinate System, South Zone, NAD 83. All dimensions are in feet and decimals thereof.

Jose D. Medina, R.P.L.S.
Registered Professional
Land Surveyor No. 5719



21 October 2019
Date



GENERAL NOTES

1. BASIS OF BEARINGS AS PER THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NAD 83.
2. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A COMMITMENT FOR TITLE INSURANCE AND MAY BE SUBJECT TO EASEMENT AND RESERVATIONS NOT REFLECTED THEREON.

SURVEYOR CERTIFICATE

I, JOSE D. MEDINA, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS DRAWING WAS PREPARED FROM AN ON THE GROUND SURVEY PERFORMED BY ME OR BY MEN UNDER MY SUPERVISION. THIS SURVEY CONFORMS TO THE MINIMUM STANDARDS OF PRACTICE PROMULGATED BY THE TEXAS BOARD OF PROFESSIONAL LAND SURVEYORS.

JOSE D. MEDINA, R.P.L.S.
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 5719

DATE

21 October 2019



BOUNDARY SURVEY OF:

BEING A 0.05 ACRE TRACT OUT OF HIDALGO COUNTY IRRIGATION DISTRICT NO. 1 RIGHT OF WAY OUT OF LOT 9 AND LOT 12, BLOCK 278, TEXAS MEXICAN RAILWAY COMPANY SURVEY, RECORDED IN VOLUME 24, PAGES 170-171, DEED RECORDS OF HIDALGO COUNTY, TEXAS

REVISED 21 OCTOBER 2019: CORRECTED BLOCK NAME

FOR: HIDALGO COUNTY IRRIGATION DISTRICT NO. 3

FERRIS, FLINN & MEDINA, LLC

ENGINEERS SURVEYORS

1405 N. STUART PLACE ROAD

PALM VALLEY, TEXAS 78552

PHONE (956) 364-2236 FAX (956) 364-1023

TEXAS BOARD OF PROFESSIONAL LAND SURVEYING
FIRM REGISTRATION NO. 10037000

TEXAS BOARD OF PROFESSIONAL ENGINEERS
FIRM REGISTRATION NO. F-697

1" = 50'

DRAWN BY: JDM

13 SEPTEMBER 2019

JOB NO: 142-040

CREW: MIGUEL GUTIERREZ

LATITUDE: 26° 17' 30.1"

LONGITUDE: 98° 13' 16.4"



Scale: 1" = 50'

F:\0142 HCWID No. 3\142-040 Canal Survey North of Trenton\142-040.dwg, HCD1 EAS, 10/21/2019 4:31:29 PM

EXHIBIT A-1

CAUSE NO. CCD-0517-D

HIDALGO COUNTY WATER	§	EMINENT DOMAIN PROCEEDING
IMPROVEMENT DISTRICT NO. 3	§	
Condemnor,	§	
V.	§	IN THE COUNTY COURT AT LAW NO. 4
	§	
HIDALGO COUNTY IRRIGATION	§	HIDALGO COUNTY, TEXAS
DISTRICT NO. 1	§	
Condemnee.	§	

SPECIAL COMMISSIONERS' AWARD

WHEREAS, Hidalgo County Water Improvement District No. 3 ("District 3"), having by law the right of eminent domain and the power of condemnation; and

WHEREAS District 3 did file a certain Condemnor's Original Petition in Condemnation with the Presiding Judge of the County Court at Law No. 4, Hidalgo County, Texas, wherein, upon facts therein alleged, it sought condemnation of all the right, title and interests of Condemnee, for a subsurface easement, consisting of a tract of land located in Hidalgo County, Texas, and more particularly described in the Condemnor's Original Petition in Condemnation and supporting exhibits attached herein, which land was sought to be condemned because same was necessary for the construction, maintenance and operation of a new public water pipeline, and to the extent and for the purposes specified and described in the Condemnor's Original Petition in Condemnation on file herein; and

WHEREAS, upon consideration of such statement, the Presiding Judge of the County Court at Law No. 4, Hidalgo County, Texas, appointed the undersigned three disinterested real property owners who reside in Hidalgo County, Texas, as Special Commissioners to fairly assess

the damages occasioned by the condemnation of all the right, title, claim and interests of the above-named party and to said property, and reference is here now made to said order of the Court, and same is incorporated herein by reference the same as if fully copied herein; and

WHEREAS, thereafter the undersigned Commissioners so appointed, duly qualified as such by each taking the oath prescribed by law, which oath is on file with the papers in this cause, and reference is here now made to said oath, and same is incorporated herein fully by reference; and

WHEREAS, by order duly issued and made and signed by each of us, and by agreement of all the parties hereto, said agreements being on file with the Court, we designated and appointed the 12th day of February, 2020, at 9:30 A.M. at the Casa De Palmas, Board Room, 101 N. Main St., McAllen, Texas 78501 in Hidalgo County, Texas as the day and place for hearing on property interests held by Hidalgo County Irrigation District No. 1, such day being the earliest practicable time and such place being in the County in which said property in controversy is situated; and

Upon the date and at the place so appointed for such hearing, service of Notice having been perfected or waived as provided by law, we proceeded to hear evidence as to the value of the right, title, claim and interests of the Condemnee in and to that certain property, and being more particularly described in the Condemnor's Original Petition in Condemnation and supporting exhibits attached herein; and

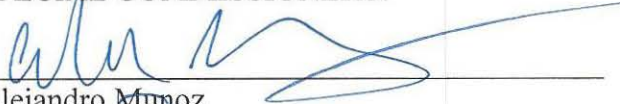
The Commissioners having considered the damages, if any, which will be sustained by the Condemnee by reason of the condemnation of said land and by reason of the condemnation of all of the said property, property rights, title, claim and interests of the Condemnee in and to the property described above and having considered the benefits, if any, that will result to the

remainder of the property belonging to the Condemnee, such condemnation being for the purposes set out in the Condemnor's Original Petition in Condemnation and in the order of the Court appointing the Commissioners, all as required by law, excluding from consideration and from our estimate those injuries or benefits which said owner and claimant sustains or receives in common with the community generally and which are not peculiar to them and connected with the ownership, use and enjoyment of the said property above described, and having the injuries and damages sustained by the said Condemnee by reason of such condemnation of said rights as described above.

NOW THEREFORE, on this 12th day of February, 2020, the Commissioners do hereby assess the actual total damages which will accrue to the Condemnee by reason of the taking of said property by District 3 for the purposes set out in the Condemnor's Original Petition in Condemnation attached herein at the sum of \$ 1,900.00, and on this same day, we reduced this our decision to writing, and we further decide and adjudicate that District 3 shall pay all costs of this proceeding for the reasons provided by law.

IN TESTIMONY WHEREOF, we have signed this decision and dated it the 12th day of February, 2020, such being the date on which the decision was rendered.

SPECIAL COMMISSIONERS:


Alejandro Munoz


J.R. Ramirez



Gumaro Gonzales


SPECIAL COMMISSIONERS' CERTIFICATE OF TIME

The undersigned Special Commissioners certify that a hearing was conducted on the 12th day of February, 2020, and that the time served in said hearing and related activities, including signing oaths and notices, and scheduling work was 3 hours.

WITNESS OUR HANDS this 12th day of February, 2020.


Alejandro Munoz


J.R. Ramirez


Gumaro Gonzales

CAUSE NO. CCD-0517-D

HIDALGO COUNTY WATER	§	EMINENT DOMAIN PROCEEDING
IMPROVEMENT DISTRICT NO. 3	§	
Condemnor,	§	
	§	IN THE COUNTY COURT AT LAW NO. <u>4</u>
V,	§	
	§	
HIDALGO COUNTY IRRIGATION	§	HIDALGO COUNTY, TEXAS
DISTRICT NO. 1	§	
Condemnee.	§	

CONDEMNOR'S ORIGINAL
PETITION FOR CONDEMNATION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Hidalgo County Water Improvement District No. 3 (hereinafter referred to as "Condemnor"), a Water Control and Improvement District with eminent domain authority, and files this Original Petition for Condemnation, seeking easement rights from Hidalgo County Irrigation District No. 1 (hereinafter referred to as "Condemnee") , and respectfully shows the Court as follows:

Discovery

1. If and when this proceeding becomes a judicial proceeding, discovery shall be conducted under Rule 190.4 (Level 3) of the Texas Rules of Civil Procedure. Condemnor seeks monetary relief of \$100,000 or less and non-monetary relief. The damages and relief sought are within the jurisdictional limits of the Court. Because this proceeding arises under Chapter 21 of the Texas Property Code, Texas Rule of Civil Procedure 169 regarding the expedited actions process does not apply to this suit. TEX. R. CIV. P. 169(a)(2).

CCD-0517-D
Jurisdiction and Venue

2. Venue is proper in this County pursuant to Section 21.013 of the Texas Property Code.

Parties

3. Condemnor is a duly created Water Control and Improvement District, having been converted from a Water Improvement District in 1926, and having all powers, rights, privileges and functions conferred by general law upon any district created pursuant to Article 16, Section 59, of the Constitution of the State of Texas, and those specific powers enumerated in Chapter 49 and Chapter 51 of the Texas Water Code. Condemnor has the rights and powers, among others, to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside Condemnor's boundaries any and all land, works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of Condemnor or purposes authorized by law. In accordance with Section 49.222 of the Texas Water Code, Condemnor has the right to acquire by condemnation any and all property necessary or convenient to the exercise of its powers, rights, privileges, and functions conferred upon it. Condemnor's principal office and place of business is in Hidalgo County, Texas.

4. Condemnor is informed and believes, and so alleges, that the following Condemnee holds or claims some interest in or title to the property described herein, and may be served with citation and/or notice as follows:

- a. Hidalgo County Irrigation District No. 1, c/o Rusty McDaniel, General Manager, 1904 N. Expressway 281, Edinburg, Texas, 78542.

Condemnor reserves the right to add the names of any such additional landowners, lienholders, easement holders, or claimants, whose interest may subsequently appear and to condemn the interest of each of such other parties as may subsequently appear for the purposes stated herein.

CCD-0517-D

Landowner Bill of Rights

5. Condemnor brings this action pursuant to the pertinent provisions of Section 21.001 through 21.065, both inclusive, of the Texas Property Code, as amended. Condemnor has provided the property owner with the bill of rights statement in accordance with Section 21.0112.

Public Use and Necessity for Condemnation

6. Pursuant to the powers and duties granted to and imposed upon it, Condemnor, by a resolution of its Board of Director (the "Resolution"), has determined that there exists a public necessity for, and has determined that it is necessary to acquire by condemnation or otherwise, subsurface easement rights in and under property owned by Condemnee, as described and more particularly set out below. In order (i) to provide continuous and adequate retail water service to customers within the boundaries of Condemnor, as well as the sale of surplus water to customers, including other districts, outside the boundaries and in the vicinity of the District and (ii) to pump and deliver irrigation water to other districts in the vicinity, a public necessity exists for the acquisition of subsurface easement rights in and under Condemnee's property in order to accomplish the public purpose of constructing, operating, and maintaining a new public water pipeline and any necessary related appurtenances and improvements. This is the public use for which Condemnor intends to acquire the easement rights described in this petition.

Property Rights Sought

7. Condemnor seeks and condemns for a ten foot wide (10') exclusive and perpetual subsurface easement for the purpose of installing, constructing, maintaining, operating, repairing, rebuilding, relocating, upgrading, replacing, removing and abandoning one pipeline of a nominal forty-eight inch (48") diameter encased in a nominal sixty-six inch (66") diameter steel casing, along with any necessary appurtenances thereto (the "Pipeline Facilities"), for the purposes of

CCD-0517-D

transporting raw water in and under a portion of land owned by Condemnee, more particularly described and depicted in the attached Exhibit "A" (referred to herein as the "Easement Tract").

8. Condemnor shall install the Pipeline Facilities via bore from adjacent lands and is not seeking to acquire any rights to access the surface of the Easement Tract. The Pipeline Facilities shall be installed at a depth of at least five feet (5') below the bottom of the double seventy-two inch (72") siphons located in the Easement Tract. The foregoing notwithstanding, Condemnor shall have the right to select the exact location of the Pipeline Facilities within the Easement Tract.

Rights Retained by Condemnee

9. Condemnee shall retain the right to use the Easement Tract for any and all purposes not inconsistent with the rights being acquired by Condemnor herein. All oil, gas, and other minerals and water rights owned by Condemnee in, on, and under the Easement Tract shall be reserved to Condemnee; provided, however, Condemnee shall not be permitted to drill or excavate for oil, gas, other minerals, or water on the surface of the Easement Tract, but Condemnee may extract oil, gas, other minerals, or water from and under the Easement Tract by directional drilling or other means which do not interfere with or disturb Condemnor's use of the Easement Tract.

Bona Fide Offer

10. Condemnor, acting by and through its duly authorized agents, has made a bona fide offer to voluntarily acquire by purchase, and has offered to pay such reasonable damages, if any, as might result from the acquisition and use of, the easement rights described herein. Condemnor's bona fide offer comported in all respects with Section 21.0113 of the Texas Property Code.

11. Condemnor has been unable to agree with the Condemnee upon the value of the easement rights sought in this condemnation action and the damages, if any, to the remainder of

CCD-0517-D

Condemnee's property. Accordingly, it has become necessary to institute this proceeding. All conditions precedent to instituting this condemnation proceeding have occurred or have been performed.

Texas Property Code Disclosure

12. Pursuant to TEX. PROP. CODE § 21.023, the Condemnee or the Condemnee's heirs, successors, or assigns may be entitled to:

- a. repurchase the property under Subchapter E of Chapter 21 of the Texas Property Code; or
- b. request from Condemnor certain information relating to the use of the acquired property and any actual progress made toward that use; and
- c. the repurchase price is the price paid to Condemnee by Condemnor at the time Condemnor acquired the property through eminent domain.

WHEREFORE, Condemnor prays that the Court forthwith appoint three (3) disinterested real property owners who reside in this County as Special Commissioners as required by law; appoint two alternate Special Commissioners; provide the parties with fourteen (14) days from signing the Order of Appointment to strike a commissioner pursuant to section 21.014 of the Texas Property Code; upon the appointment of the Commissioners and their acceptance thereof and qualification according to law, that the Commissioners promptly set a time and place for hearing in accordance with the law and that notice in writing of the time and place selected for the hearing be issued by the Commissioners to each of the parties hereto; upon the issuance and service of such notice, a hearing be held in accordance therewith and upon such hearing that the Commissioners assess the actual damages, if any, that will be sustained by Condemnee by the aforesaid condemnation and thereafter reduce their decision to writing, assessing the damages, if any, and costs according to law, and that they date and sign their decision and file it with the Court; that thereafter a Judgment of Condemnation be entered by the Court vesting in

CCD-0517-D

Condemnor the easement rights as described and set forth above; Condemnor further prays that upon payment into the Registry of this Court of the amount awarded Condemnee by the Special Commissioners, Condemnor have a Writ of Possession issued in its behalf and such other process necessary to enforce the decision of the Special Commissioners and Judgment of Condemnation; and Condemnor be granted costs of suit and such other and further relief, general and special, at law or in equity, as to which it may be justly entitled.

Respectfully submitted,

JACKSON WALKER L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
512-236-2000
Fax No. 512-236-2002
Email - banderson@jw.com



W. Brad Anderson – State Bar No. 24055106

Law Office of Randolph Kimble Whittington
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Harlingen, Texas 78550
(956) 423-7200
Fax (956) 423-7999
email - chagofuentes@rkwlaw.com

Randolph K. Whittington – State Bar No.
21404500

ATTORNEYS FOR HIDALGO COUNTY
WATER IMPROVEMENT DISTRICT NO. 3

CCD-0517-D

CERTIFICATE OF SERVICE

This is to certify that on the 14th day of November, 2019, a true and correct copy of the foregoing has been forwarded via certified mail, return receipt requested to:

Via Certified Mail Return Receipt Requested

Mr. Rusty McDaniel
General Manager
Hidalgo County Irrigation District No. 1
1904 N. Expressway 281
Edinburg, Texas 78542

***Via Certified Mail, Return Receipt Requested
and E-service***

A. Kirby Cavin
Atlas Hall & Rodriquez, LLP
818 Pecan
McAllen, Texas 78501
akcavin@atlashall.com



Brad Anderson

CCD-0517-D

EXHIBIT A

FERRIS, FLINN & MEDINA, LLC

CCD-0517-D

ENGINEERS SURVEYORS

Revised
21 October 2019

**METES AND BOUNDS
0.05 ACRE TRACT OUT OF
HIDALGO COUNTY IRRIGATION DISTRICT NO. 1 RIGHT OF WAY**

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COMMENCING at the Northeast corner of Lot 60, La Floresta Subdivision Phase 1, recorded in Volume 55, page 170, Map Records of Hidalgo County, Texas and being on a curve to the left, for an angle point; (Having Coordinate values of X = 1075482.8186 Y = 16631372.6748 of the Texas State Plane Coordinate System, South Zone, NAD 83)

THENCE along said curve to the left having a radial bearing of North 73 Deg. 55 Min. 31 Sec. West, a Radius of 1000.00 Feet, having an Arc Length of 60.49 Feet, a delta angle of 03 Deg. 27 Min. 57 Sec., with a Chord bearing of North 14 Deg. 20 Min. 30 Sec. East and a Chord Distance of 60.48 Feet to a point on the South right of way of Hidalgo County Irrigation District No. 1;

THENCE along the South Right of way of Hidalgo County Drainage District No. 1, South 62 Deg. 04 Min. 10 Sec. East a distance of 96.37 Feet to a 1/2 inch iron rod with plastic cap stamped MEDINA 5719 set, for the Southwest corner and **POINT OF BEGINNING** of the centerline herein described; (Having coordinate values of X = 1075582.9442 Y = 16631386.1329 based on the Texas State Plane Coordinate System, South Zone, NAD83);

1) **THENCE** leaving the South Right of way of Hidalgo County Irrigation District No. 1, North 25 Deg. 32 Min. 06 Sec. East a distance of 198.39 Feet to a 1/2 inch iron rod with plastic cap stamped MEDINA 5719 set on the North Right of way of Hidalgo County Drainage District No. 1, for the Northwest corner of the tract herein described;

2) **THENCE** along the North Right of way of Hidalgo County Irrigation District No. 1, South 56 Deg. 59 Min. 52 Sec. East a distance of 10.09 Feet to a 1/2 inch iron rod with plastic cap stamped MEDINA 5719 set, for the Northeast corner the tract herein described;

3) **THENCE** leaving the North Right of way of Hidalgo County Irrigation District No. 1, South 25 Deg. 32 Min. 06 Sec. West a distance of 161.16 Feet to the point on the South Right of way of Hidalgo County Irrigation District No. 1 and being the North boundary of Lot 16A and 17A, Timberhill Villa No. 4, recorded in Volume 27, Page 146A, Map Records of Hidalgo County, Texas, for a corner of the tract herein described;

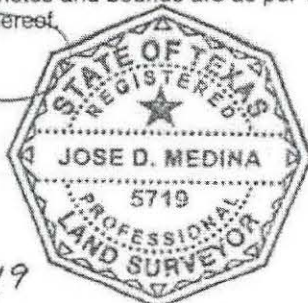
4) **THENCE** along the South Right of way of Hidalgo County Irrigation District No. 1 and along the North boundary of Timberhill No. 4, North 56 Deg. 58 Min. 52 Sec. West a distance of 1.01 Feet to a 1/2 inch iron rod found for the Northwest corner of said Lot 16A and 17A, Timberhill Villa No. 4 and a corner of the tract herein described;

5) **THENCE** along the West boundary of Lot 16A and 17A, Timberhill Villa No. 4, South 08 Deg. 47 Min. 38 Sec. West a distance of 3.47 Feet to a point, for a corner of the tract herein described;

6) **THENCE** along the South Right of way of Hidalgo County Irrigation District No. 1, North 62 Deg. 04 Min. 10 Sec. West a distance of 10.01 Feet the **POINT OF BEGINNING**; Containing 0.05 Acre within these metes and bounds.

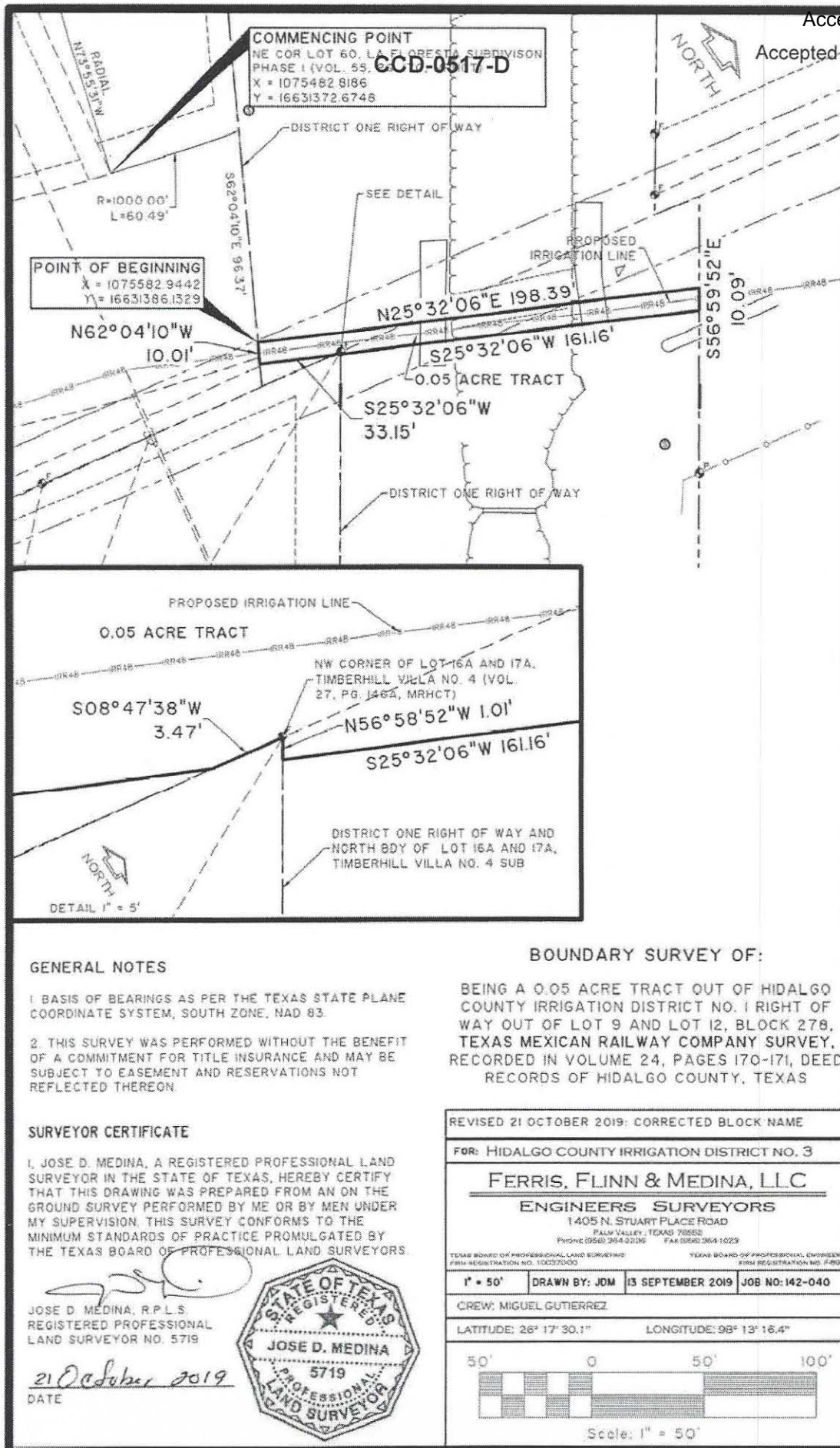
Basis of bearings on this metes and bounds are as per Texas Sate Plane Coordinate System, South Zone, NAD 83. All dimensions are in feet and decimals thereof.

Jose D. Medina, R.P.L.S.
Registered Professional
Land Surveyor No. 5719



21 October 2019
Date

F:\0142 HCWID No. 3\142-040 Canal Survey North of Trenton\MB\0.05 HCID1 Eas.docx Page 1 of 1



F:\0142 HCWID No. 3\142-040 Canal Survey North of Trenton\Draw\142-040.dwg, HCDI1 EAS, 10/21/2019 4:31:29 PM

CAUSE NO. CCD-0517-D

HIDALGO COUNTY WATER
IMPROVEMENT DISTRICT NO. 3
Condemnor,

§ EMINENT DOMAIN PROCEEDING
§
§
§ IN THE COUNTY COURT AT LAW NO. ____
§
§

V.

HIDALGO COUNTY IRRIGATION
DISTRICT NO. 1
Condemnee.

§ HIDALGO COUNTY, TEXAS

ORDER APPOINTING COMMISSIONERS

The Hidalgo County Water Improvement District No. 3 has filed a petition in the above-styled and numbered proceeding in which it seeks acquisition of certain rights by condemnation on and across the property owned by Condemnee and described in the petition.

IT IS THEREFORE ORDERED that:

- 1.) _____ (Name)
 _____ (Address)
 _____ (Address)
 _____ (Phone)
 _____ (Email)
- 2.) _____ (Name)
 _____ (Address)
 _____ (Address)
 _____ (Phone)
 _____ (Email); and
- 3.) _____ (Name)
 _____ (Address)
 _____ (Address)
 _____ (Phone)
 _____ (Email),

who are three disinterested real property owners who reside in Hidalgo County, Texas, are hereby appointed Special Commissioners in the above-styled and numbered proceeding, to assess in accordance with the law the damages, if any, sustained by reason of such condemnation, by those with an ownership or other interest in the property.

CCD-0517-D

Pursuant to section 21.014(a) each party is entitled to (but not required to) strike one of the three special commissioners. The deadline for the parties to exercise this right shall be fourteen (14) days from the entry of this Order. In the event that any party exercises the right to strike a commissioner, the following shall serve in his or her place.

- 4.) _____ (Name)
_____ (Address)
_____ (Address)
_____ (Phone)
_____ (Email)
- 5.) _____ (Name)
_____ (Address)
_____ (Address)
_____ (Phone)
_____ (Email); and

SIGNED this ____ day of _____, 2019.

PRESIDING JUDGE

OFFICIAL RECEIPT
Arturo Guajardo Jr.
Hidalgo County Clerk
P.O. Box 58, Edinburg, Texas 78540
phone: 956.318.2100 fax: 956.318.2251



Payor
Hidalgo County Water Improvement District No. 3
1401 McKinney
Suite 1900
Houston, TX 77010

Receipt No
2020-002067

Transaction Date
02/14/2020

Description	Amount Paid
On Behalf Of Hidalgo County Water Improvement District No. 3 CCD-0517-D Hidalgo County Water Improvement District No. 3 VS. Hidalgo County Irrigation District No. 1 Trust Account	
Registry (CV)	1,900.00
SUBTOTAL	1,900.00
PAYMENT TOTAL	1,900.00
Check (Ref #9025) Tendered	1,900.00
Total Tendered	1,900.00
Change	0.00

47/35 HHIDALGO COUNTY WATER IMPROVEMENT DIST #3

02/14/2020
02:54 PM

Cashier
Station BK4

Audit
16825373

OFFICIAL RECEIPT

SECURITY FEATURES INCLUDE TRUE WATERMARK PAPER, HEAT SENSITIVE ICON AND FOIL HOLOGRAM.

**HIDALGO CO. WATER IMPROVEMENT
DISTRICT #3 M & O ACCOUNT**
1325 PECAN BLVD
MCALLEN, TX 78501

TEXAS REGIONAL BANK
www.texasregionalbank.com
Telebank 866-972-5430

9025

88-1733/1149

CHECK ARMOR

2/12/2020

PAY TO THE ORDER OF Hidalgo County Clerk Office

\$**1,900.00

One Thousand Nine Hundred and 00/100*****

DOLLARS

Hidalgo County Clerk Office

MEMO

Special Commissioners Award Dept
Cause No CCD-0517-D
Administration Business Expenses

VALID VALID
VALID VALID
VALID VALID
VALID VALID

[Signature]
AUTHORIZED SIGNATURE

009025 114917335

031001841

47/35 2020-002067

EXHIBIT A-3

CAUSE NO. CCD-0517-D

HIDALGO COUNTY WATER	§	EMINENT DOMAIN PROCEEDING
IMPROVEMENT DISTRICT NO. 3	§	
Condemnor,	§	
V.	§	IN THE COUNTY COURT AT LAW NO. 1
HIDALGO COUNTY IRRIGATION	§	
DISTRICT NO. 1	§	
Condemnee.	§	HIDALGO COUNTY, TEXAS

CONDEMNEE’S ANSWER AND WRITTEN STATEMENT OF OBJECTIONS

NOW COMES HIDALGO COUNTY IRRIGATION DISTRICT NO. ONE, Defendant-Condemnee in the above-entitled and numbered cause, and files this its Original Answer and Written Statement of Objections, and in support thereof respectfully shows unto the Court as follows:

1. GENERAL DENIAL

Reserving the right to file other and further pleadings, exceptions, and denials, HIDALGO COUNTY IRRIGATION DISTRICT NO. ONE (“HCID NO. ONE”), denies each and every material allegation contained in Condemnor’s Original Petition and demands strict proof thereof in accordance with the laws and the Texas Rules of Civil Procedure.

2. STATEMENT OF OBJECTIONS

2.1 A party to a condemnation proceeding may object to the findings of the special commissioners by filing a written statement of the objections and their grounds with the court that has jurisdiction of the proceeding. TEX. PROP. CODE ANN. § 21.018(a). HCID NO. ONE makes the following written objections to the Special Commissioners’ findings.

2.2 HCID NO. ONE has an open irrigation outtake canal just south of the intersection of Freddy Gonzalez Drive and Bicentennial Boulevard in McAllen, Texas (the “Canal”). Two 72” reinforced concrete pressure pipes (the “Pipes”), which sit on a gravel bed, run east and west below a proposed

expansion of Bicentennial Boulevard connecting the Canal on each side of the proposed roadway. The Canal services numerous HCID NO. ONE customers from this intersection north to Highway 107 in Edinburg, then east along Highway 107, and continuing north of the University of Texas at Rio Grande Valley campus. A majority of the drinking water supplied to the City of Edinburg flows through the Canal.

2.3 Hidalgo County Water Improvement District No. 3 (“HCWID NO. 3”) plans to have constructed and maintain a new public water pipeline that crosses the Canal. On November 14, 2019, HCWID NO. 3 filed its Original Petition for Condemnation seeking to condemn a ten-foot wide subsurface easement more particularly described as a 0.05 Acre Tract out of Hidalgo County Irrigation District No. One Right of way out of Lot 9 and Lot 12, Block 278, Texas Mexican Railway Company Survey, recorded in Volume 24, Pages 170-171, Deed Records of Hidalgo County, Texas (hereinafter the “Condemned Property”). On February 13, 2020, the appointed Special Commissioners awarded HCWID NO. 3 the Condemned Property and assessed damages of \$1,900.00 in favor of HCID NO. ONE for the taking. HCID NO. ONE hereby objects to the Special Commissioners’ findings on the grounds that the Condemned Property is already dedicated to a public use, and HCWID NO. 3’s intended use will materially interfere with HCID NO.1’s use and is not paramount to HCID NO. ONE’s public use.

2.4 HCID NO. ONE objects to the Special Commissioners’ findings on the grounds that the Condemned Property is already dedicated to a public use. It is undisputed that HCID NO. ONE currently uses the Condemned Property for a public purpose: providing water and irrigation services to numerous residents of Hidalgo County. If the property to be condemned is already devoted to another public use, condemnation may be denied if the condemnee can establish that

permitting condemnation would either practically destroy or materially interfere with the existing public use.

2.5 HCID NO. ONE objects to the Special Commissioners' findings on the grounds that HCWID NO. 3's planned use of the Condemned Property will materially interfere with HCID NO. ONE's infrastructure and its existing use. HCWID NO. 3 condemned the Condemned Property in order to install a 48" pipe (the "HCWID 3 Pipe") encased in a 66" steel casing 2.3 feet below the existing Pipes. The HCWID 3 Pipe cannot be put into place without first boring and excavating the material that sits 2.3 feet below the existing Pipes. In order to bore and excavate the in situ material, place the steel casing, and receive the HCWID 3 Pipe, HCWID NO. 3 must dig a boring receiving station on the north side of the Canal (the "Station").

2.6 First, the necessary location of the Station is in such close proximity to the Canal that it will practically destroy the Canal, the Pipes, and HCID NO. ONE's operations in that it will prevent service to HCID NO. ONE's customers. Second, the depth at which the HCWID 3 Pipe will be placed will destroy the Pipes. The steel casing's placement and the vibrations caused by the boring will disturb the gravel bedding that supports the Pipes. Disturbing the gravel bedding will cause the Pipes' seals to crack and leak. Further, the HCWID 3 Pipe cannot be placed at a deeper location on the Condemned Property. To place the HCWID 3 Pipe any deeper would require boring and excavating a larger receiving station on the north side of the Canal in order to maintain a proper and safe slope of the embankments adjacent to the receiving station. If the Station is not properly sloped and instead is dug straight down or with pit walls that are at steep angles, there is a high probability the receiving station will cave in causing a serious safety issue. In addition to materially interfering with the Canal and Pipes, a larger Station also would encroach on the land of surrounding property and other landowners. Permitting HCWID NO. 3 to condemn

the Condemned Property will at least materially interfere with, if not practically destroy, the existing use.

2.7 In theory, condemnation still could be permitted if the condemnor can establish that (1) its purpose for condemnation is of paramount importance and (2) cannot be practically accomplished in any other way. When a conflict between two public uses arises, the private interest of the condemnor cannot be considered. The first occupier of the property is entitled to all of the advantages derived from the establishment of the public use, and the condemnor's convenience or expense cannot be considered in this case.

2.8 Because the Condemned Property already is devoted undisputedly to public use, it is not in the public's interest to destroy that use for the convenience or interest of HCWID NO. 3 simply for another, similar public use. The law is clear that the Condemned Property shall not be taken via condemnation if the taking will destroy the existing public use, unless the Condemnor can prove that its proposed use is of such great importance to the public as to demand that HCID NO. ONE's use is of less importance and shall be set aside.

2.9 HCWID NO. 3 claims that there exists a public necessity for subsurface easement rights in and under the Condemned Property to construct, operate, and maintain a new public water pipeline "(i) to provide continuous and adequate retail water service to customers within the boundaries of [HCWID NO. 3], as well as the sale of surplus water to customers, including other districts, outside the boundaries and in the vicinity of [HCWID NO. 3] and (ii) to pump and deliver irrigation water to other districts in the vicinity...". See Condemnor's Original Petition, ¶ 6. HCID NO. One Denies this. HCID NO. ONE has at all times used the subsurface of the Condemned Property to maintain a public water pipeline. The Pipes and Canal are used to provide continuous and adequate retail water service to customers within HCID NO. ONE's boundaries, to sell surplus water to

customers outside the boundaries and in the vicinity of HCID NO. ONE, and to pump and deliver irrigation water.

2.10 HCWID NO. 3 proposes a public use that is identical to the public use for which HCID NO. ONE has at all times used the Condemned Property. HCWID NO. 3's decision to install a new public water pipeline across the Canal is of no greater importance than HCID NO. ONE's current public use of the Condemned Property. Further, the location of the HCWID 3 Pipe across the Canal is not of paramount importance to the public, and the HCWID 3 Pipe could be located at another place that would not practically destroy HCID NO. ONE's infrastructure and ability to service the public. HCWID NO. 3 could place HCWID 3 Pipe in a different location, one that does not interfere with HCID NO. ONE's Canal, Pipes, or operations. Because HCWID NO. 3 cannot establish that its public use is of paramount importance to that which the Condemned Property is currently devoted, and HCWID NO. 3 can install the HCWID 3 Pipe at a different location that does not materially interfere with or substantially destroy HCID NO. ONE's use of the Condemned Property, it cannot satisfy its burden under the paramount purpose standard. Therefore, permitting the condemnation of this property, which is already devoted to a public use, is improper.

3. PRAYER

WHEREFORE, PREMISES CONSIDERED, HIDALGO COUNTY IRRIGATION DISTRICT NO. ONE prays that upon the trial on the merits Condemnor take nothing by this suit against Condemnee, that Condemnee recover its reasonable attorney's fees and for such other relief in law or equity to which Condemnee may be justly entitled.

Respectfully submitted,

ATLAS, HALL & RODRIGUEZ, LLP

P. O. Box 3725 (78502-3725)

818 W. Pecan Blvd.

McAllen, Texas 78501

Phone: (956) 682-5501

Facsimile: (956) 686-6109

By: /s/ Daniel G. Gurwitz

Daniel G. Gurwitz

State Bar No. 00787608

Email: dgurwitz@atlashall.com

Meredith D. Helle

State Bar No. 24106188

Email: mhelle@atlashall.com

ATTORNEYS FOR CONDEMNEE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded in compliance with the Texas Rules of Civil Procedure on this 5th day of March 2020 as follows:

W. Brad Anderson
JACKSON WALKER L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
Tel: (512) 236-2000
Fax: (512) 236-2002
banderson@jw.com

Randolph K. Whittington
Law Office of Randolph Kimble Whittington
2014 E. Harrison Ave.
Harlingen, Texas 78550
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Fax: (956) 423-7999
chagofuentes@rkwlaw.com

/s/ Daniel G. Gurwitz

Daniel G. Gurwitz

CAUSE NO. CCD-0517-D

HIDALGO COUNTY WATER	§	EMINENT DOMAIN PROCEEDING
IMPROVEMENT DISTRICT NO. 3	§	
Condemnor,	§	
V.	§	IN THE COUNTY COURT AT LAW NO. 1
HIDALGO COUNTY IRRIGATION	§	
DISTRICT NO. 1	§	
Condemnee.	§	HIDALGO COUNTY, TEXAS

CONDEMNEE’S PLEA TO THE JURISDICTION

NOW COMES HIDALGO COUNTY IRRIGATION DISTRICT NO. ONE, Defendant-Condemnee in the above-entitled and numbered cause, and in addition to its Answer and Written Statement of Objections, files this its Plea to the Jurisdiction, and in support thereof respectfully shows unto the Court as follows:

1. PLEA TO THE JURISDICTION

1.1 HIDALGO COUNTY IRRIGATION DISTRICT NO. ONE (“HCID NO. ONE”) asks this Court to dismiss Plaintiff’s suit because the court lacks jurisdiction. This Court does not have jurisdiction over this suit because Plaintiff has not demonstrated and cannot affirmatively demonstrate that this Court has jurisdiction to hear the suit or that any statute exists that waives the government’s immunity from suit. *See Learners Online, Inc. v. Dallas ISD*, 333 S.W.3d 636, 640 (Tex. App. – Dallas 2009, no pet.); *City of Waco v. Lopez*, 259 S.W.3d 147, 150 (Tex. 2008); see also *In re Lazy W Dist. No. 1*, 493 S.W.3d 538, 544 (Tex. 2016). The Texas Legislature has not waived Defendant’s immunity from suit for this claim. Plaintiff’s suit involves a claim against the HCID No. One to condemn subsurface easement rights in and under property owned by HCID No. One.

1.2 A governmental entity cannot be sued unless the Legislature has waived that entity’s immunity from suit for that specific claim. *Tex. Dep’t of Transp. v. Jones*, 8 S.W.3d 636,

638 (Tex. 1999); *Fed. Sign v. Tex. S. Univ.*, 951 S.W.2d 401, 405 (Tex. 1997). Nothing in any statute or act of the Texas Legislature gives Plaintiff the authority to file this suit against Defendant. *See In re Lazy W Dist. No. 1*, 493 S.W.3d 538, 544 (Tex. 2016) (holding a water district can assert immunity from suit even against a suit for condemnation on an easement by another governmental entity).

2. PRAYER

WHEREFORE, PREMISES CONSIDERED, HIDALGO COUNTY IRRIGATION DISTRICT NO. ONE prays that this lawsuit be dismissed for lack of subject matter jurisdiction due to governmental immunity and for such other relief in law or equity to which Condemnee may be justly entitled.

Respectfully submitted,

ATLAS, HALL & RODRIGUEZ, LLP
P. O. Box 3725 (78502-3725)
818 W. Pecan Blvd.
McAllen, Texas 78501
Phone: (956) 682-5501
Facsimile: (956) 686-6109

By: /s/ Daniel G. Gurwitz_____

Daniel G. Gurwitz
State Bar No. 00787608
Email: dgurwitz@atlashall.com
Meredith D. Helle
State Bar No. 24106188
Email: mhelle@atlashall.com
Allison Boyle
State Bar No. 24087197
Email: aboyle@atlashall.com

ATTORNEYS FOR CONDEMNEE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded in compliance with the Texas Rules of Civil Procedure on this 1st day of June 2020 as follows:

W. Brad Anderson
JACKSON WALKER L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
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Fax: (512) 236-2002
banderson@jw.com

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/s/ Daniel G. Gurwitz
Daniel G. Gurwitz

CAUSE NO. CCD-0517-D

HIDALGO COUNTY WATER	§	EMINENT DOMAIN PROCEEDING
IMPROVEMENT DISTRICT NO. 3	§	
Condemnor,	§	
	§	IN THE COUNTY COURT AT LAW NO. 4
V.	§	
	§	
HIDALGO COUNTY IRRIGATION	§	HIDALGO COUNTY, TEXAS
DISTRICT NO. 1	§	
Condemnee.	§	

**HIDALGO COUNTY WATER IMPROVEMENT DISTRICT NO. 3'S
MOTION FOR ISSUANCE OF WRIT OF POSSESSION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Hidalgo County Water Improvement District No. 3 ("Water District 3") and files this Motion for Issuance of Writ of Possession, and in support thereof respectfully states as follows:

I. INTRODUCTION AND FACTUAL BACKGROUND

1. Water District 3 has filed a petition in the above-styled and numbered proceeding in which it seeks to acquire by condemnation certain property rights as will enable it to construct, operate, and maintain a water pipeline to be located in a ten-foot wide subsurface easement under the property described in the petition.

2. The Court appointed three disinterested real property owners of Hidalgo County, Texas as Special Commissioners to assess just compensation in this condemnation case. On February 12, 2020, the Special Commissioner held a hearing and awarded \$1,900.00 as adequate compensation for Water District 3's subsurface easement.

3. On February 14, 2020, Water District 3 tendered its check into the Court's Registry for \$1,900.00 made payable to the Hidalgo County Clerk's Office, Cause No. CCD-0517-D. A

receipt demonstrating payment is attached hereto as Exhibit “A” and incorporated herein by reference.

4. On March 5, 2020, Defendant Hidalgo County Irrigation District No. 1 (“Irrigation District 1”) filed its Original Answer and Statement of Objections to the Special Commissioners’ Award, effectively converting what was an administrative proceeding into a judicial action.¹ On June 1, 2020, Irrigation District 1 followed up its Original Answer and Statement of Objections by filing a Plea to the Jurisdiction. As of the filing of this motion, Irrigation District 1 has taken no further action with respect to the allegations set forth in its Original Answer and Statement of Objections or its Plea to the Jurisdiction.

II. ARGUMENT AND AUTHORITIES

5. Section 21.021(a) of the Texas Property Code governs a condemnor’s right to possess property pending further litigation in condemnation actions. It mandates that, after Special Commissioners have made an award, a condemnor is entitled to take immediate possession of a condemnee’s property pending the results of further litigation if the condemnor:

- 1) deposits all amounts awarded by the Special Commissioners into the Court’s Registry subject to the order of the property owner;
- 2) deposits with the court a surety bond, issued by a surety company qualified to do business in this State, in the amount of money awarded by the Special Commissioners as damages, conditioned to secure the payment of an award of damages by the court in excess of the award of the Special Commissioners; and
- 3) executes a cost bond that has two or more good and solvent sureties approved by the judge of the court in which the proceeding is pending and conditioned to

¹ Condemnation cases begin with an administrative proceeding and, if necessary, the administrative proceeding is followed by a judicial one. *City of Tyler v. Beck*, 196 S.W.3d 784, 786 (Tex. 2006)(“Upon the filing of objections, the [special commissioners’] award is vacated and the administrative proceeding converts to a judicial proceeding.”).

secure the payment of additional costs that may be awarded to the property owner by the trial court or on appeal.²

Section 21.021(c) provides that if the condemning entity is a water improvement district, then it is “not required to deposit a bond or the amount equal to the award of damages under Subdivisions (2) and (3) of [21.021] (a).”³

The requirements outlined in section 21.021(a) are exhaustive; upon satisfaction, the condemning authority is entitled to immediate possession, which may be effectuated by the Court’s issuance of a writ of possession.⁴ The decision to comply with section 21.021(a) and to take immediate possession is subject to the sole discretion of the condemnor, and a condemnee has no power to interfere with that right.⁵

The primary purpose of section 21.021 is to allow a party “to possess the condemned property pending the determination of fact issues through the judicial process.”⁶ The right to immediate possession stands even while a property owner challenges a condemnor’s eminent

² TEX. PROP. CODE § 21.021(a)(1)-(3).

³ TEX. PROP. CODE § 21.021(c).

⁴ See *City of Austin v. Whittington*, 384 S.W.3d 766, 773 (Tex. 2012) (“During that litigation, the condemnor may take possession of the condemned property by paying the damages determined by the special commissioners and executing a bond approved by the court to secure payment of potential additional costs that could be awarded at trial or on appeal.”); *Hooks v. Fourth Court of Appeals*, 808 S.W.2d 56, 60–61 (Tex. 1991) (orig. proceeding) (“A condemnor takes constructive possession of property when it deposits the commissioners’ award into the registry of the court”); *Murray v. Devco, Ltd.*, 731 S.W.2d 555, 557 (Tex. 1987) (“After the Commissioners have made an award in a condemnation proceeding, a condemnor may take possession of the condemned property pending litigation if the condemnor pays the award to the property owner or the court and executes a bond.”); *Anderson v. Teco Pipeline Co.*, 985 S.W.2d 559, 563 (Tex. App.—San Antonio 1998, pet. denied) (“After special commissioners have made an award, the condemnor may take possession of the disputed property pending further litigation if it deposits the amount of the award into the court’s registry.”); *Houston Lighting & Power Co. v. Klein Indep. Sch. Dist.*, 739 S.W.2d 508, 518–19 (Tex. App.—Houston [14th Dist.] 1987, writ denied); *Houston, B. & T. R. Co. v. Hornberger*, 141 S.W. 311, 313 (Tex. Civ. App.—Galveston 1911, no writ) (discussing the former Article 4471 of the Revised Statutes of the state of Texas of 1895); *Russell v. State*, Cause No. 02-14-00178-CV, 2015 Tex. App. LEXIS 3843, 2015 WL 1743745, at *3 (Tex. App.—Fort Worth Apr. 16, 2015, no pet.) (“A condemnor that complies with property code section 21.021 is rightfully in possession of the property and cannot be guilty of trespass.”); *State v. Gordon*, Cause No. 14-94-00868-CV, 1996 Tex. App. LEXIS 605, 1996 WL 65405, at *4 (Tex. App.—Houston [14th Dist.] Feb. 15, 1996, writ denied);.

⁵ *Gordon*, 1996 WL 65405, at *4.

⁶ *In re Tex. Rice Land Partners, Ltd.*, 402 S.W.3d 334, 339 (Tex. App.—Beaumont 2013, no pet.).

domain authority.⁷ If it is later decided that a condemnor did not have the right to condemn certain property, section 21.044 of the Texas Property Code allows the court to award the property owner damages that resulted from the temporary possession.⁸

The Texas Supreme Court has held that this procedural safeguard is sufficient to protect property owners like Irrigation District 1, who challenge an entity's eminent domain authority after the entity has already taken possession.⁹ Said another way, a condemnee's right to damages under section 21.044 is an adequate remedy at law, and a condemnee is not entitled to a *de facto* injunction preventing a condemnor from taking possession by merely alleging that the condemnor lacks eminent domain authority.¹⁰

⁷ See *Denbury Green Pipeline-Texas, LLC v. Tex. Rice Land Partners, Ltd.*, 510 S.W.3d 909, 912 (Tex. 2017) ("While the suit was pending, Denbury Green took possession of Texas Rice's property pursuant to section 21.021(a) of the Texas Property Code, which allows a condemnor to take possession even while the property owner challenges the condemnor's eminent domain authority. Denbury Green then surveyed for and constructed the Green Line.") (internal citation omitted); *Hornberger*, 141 S.W. at 314 ("The right is expressly given the corporation seeking to condemn to enter upon and take possession of the property 'pending litigation,' and the right of the landowner to his writ of restitution . . . only accrues when upon a 'final decision of the case' it is determined that the right to condemn the property does not exist.").

⁸ TEX. PROP. CODE § 21.044.

⁹ See *Harris County v. Gordon*, 616 S.W.2d 167, 169 (Tex. 1981) ("The Court of Civil Appeals wrote that the County did not have the authority to condemn for a fee simple, and on this basis granted the temporary injunction. However, this action ignores the landowner's remedy provided by Article 3268(3). This statutory remedy provides for damages to the landowner for the use of the land when the condemnor does not have the right to condemn. The only limit on this award is the value of the property. The Gordons have an adequate remedy at law if it is later determined that Harris County did not have authority to condemn for a fee simple. Therefore, the Court of Civil Appeals erred in granting the injunction on the grounds stated.").

¹⁰ See *Harris County*, 616 S.W.2d at 169; *In re JDN Real Estate-McKinney, L.P.*, 211 S.W.3d 907, 915–16 (Tex. App.—Dallas 2006, orig. proceeding) ("Pursuant to section 21.044(a) of the Texas Property Code, if a condemnor took possession of property pending litigation and did not have the right to condemn that property, the court may award the property owner the damages that resulted from the condemnor's temporary possession. This statutory remedy provides for damages to the property owner for the use of the property when the condemnor does not have the right to condemn that property. As a result, this statutory remedy provides a property owner with an adequate remedy by appeal if it is later determined the condemnor did not have the authority to condemn the property.") (internal citations omitted); *Gordon*, 1996 WL 65405, at *4 ("[T]he property code permits a condemnor, in its sole discretion, to elect to make a deposit equal to the commissioners' award and take immediate possession of the premises, instead of waiting for the jury's decision."); *City of Houston*, Cause No. B14-85-646-CV, 1985 Tex. App. LEXIS 12630, at *8 (Tex. App.—Houston [14th Dist.] Dec. 19, 1985, no writ).

Water District 3 has strictly complied with Section 21.021 of the Texas Property Code and is entitled to take immediate possession of the property described in its petition pending further litigation. Specifically, Water District 3 has deposited all amounts awarded by the Special Commissioners into the Court's Registry subject to the order of Condemnee. Accordingly, Water District 3 may immediately take possession of the property described in the petition, and a writ of possession should be issued by the Clerk of this Court, commanding the sheriff or constable of this county or any constable within Texas to deliver possession of the property to Water District 3, and to make return of the writ, showing its due execution.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, Condemnor Hidalgo County Water Improvement District No. 3, respectfully requests that this Court enter an order directing the Clerk of the Court to issue a writ of possession commanding the sheriff or constable to deliver possession of the property to Water District 3, and grant Water District 3 all other relief, at law or in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

JACKSON WALKER L.L.P.

100 Congress Avenue, Suite 1100

Austin, TX 78701

(512) 236-2000

(512) 236-2002 - Fax

By: /s/ W. Brad Anderson

W. Brad Anderson

State Bar No. 24055106

Email: banderson@jw.com

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2014 East Harrison Avenue
Harlingen, Texas 78550
Phone: (956) 423-7200
Fax: (956) 423-7999
Email: chagofuentes@rkwlaw.com

Randolph K. Whittington – 21404500

**ATTORNEYS FOR DEFENDANT
HIDALGO COUNTY WATER
IMPROVEMENT
DISTRICT NO. 3**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this filing was served on the following counsel of record via the Court's electronic filing system on June 29, 2020:

Daniel G. Gurwitz
Atlas Hall & Rodriguez, L.L.P.
818 Pecan
McAllen, TX 78501
dgurwitz@atlashall.com

/s/ W. Brad Anderson
Brad Anderson

Exhibit A

OFFICIAL RECEIPT
Arturo Guajardo Jr.
Hidalgo County Clerk
P.O. Box 58, Edinburg, Texas 78540
phone: 956.318.2100 fax: 956.318.2251



Payor
Hidalgo County Water Improvement District No. 3
1401 McKinney
Suite 1900
Houston, TX 77010

Receipt No
2020-002067

Transaction Date
02/14/2020

Description	Amount Paid
On Behalf Of Hidalgo County Water Improvement District No. 3 CCD-0517-D Hidalgo County Water Improvement District No. 3 VS. Hidalgo County Irrigation District No. 1 Trust Account	
Registry (CV)	1,900.00
SUBTOTAL	1,900.00
PAYMENT TOTAL	1,900.00
Check (Ref #9025) Tendered	1,900.00
Total Tendered	1,900.00
Change	0.00

47/35 HHIDALGO COUNTY WATER IMPROVEMENT DIST #3

02/14/2020
02:54 PM

Cashier
Station BK4

Audit
16825373

OFFICIAL RECEIPT

SECURITY FEATURES INCLUDE TRUE WATERMARK PAPER, HEAT SENSITIVE ICON AND FOIL HOLOGRAM.

**HIDALGO CO. WATER IMPROVEMENT
DISTRICT #3 M & O ACCOUNT**
1325 PECAN BLVD
MCALLEN, TX 78501

TEXAS REGIONAL BANK
www.texasregionalbank.com
Telebank 866-972-5430

9025

88-1733/1149

CHECK ARMOR
TRADE - ACCEPT OR

2/12/2020

PAY TO THE ORDER OF Hidalgo County Clerk Office

\$**1,900.00

One Thousand Nine Hundred and 00/100*****

DOLLARS

Hidalgo County Clerk Office

MEMO

Special Commissioners Award Dept
Cause No CCD-0517-D
Administration Business Expenses

VALID VALID
VALID VALID
VALID VALID
VALID VALID

[Signature]
AUTHORIZED SIGNATURE

009025 114917335

031001841

47/35 2020-002067

EXHIBIT A-6

CAUSE NO. CCD-0517-D

HIDALGO COUNTY WATER	§	EMINENT DOMAIN PROCEEDING
IMPROVEMENT DISTRICT NO. 3	§	
Condemnor,	§	
V.	§	IN THE COUNTY COURT AT LAW NO. 4
HIDALGO COUNTY IRRIGATION	§	
DISTRICT NO. 1	§	
Condemnee.	§	HIDALGO COUNTY, TEXAS

**ORDER GRANTING HIDALGO COUNTY IRRIGATION
DISTRICT NO. 1'S PLEA TO THE JURISDICTION**

BE IT REMEMBERED that on July 20, 2020, came to be heard Condemnee Hidalgo County Irrigation District No. 1's Plea to the Jurisdiction. The Court, having considered Condemnee's Plea to the Jurisdiction, all responses and replies thereto, the pleadings and evidence, the arguments of counsel, and all other matters properly before it, the Court is of the opinion that said Plea to the Jurisdiction should be GRANTED and that this condemnation proceeding should be dismissed for lack of subject matter jurisdiction.

IT IS THEREFORE, ORDERED, ADJUDGED and DECREED that Condemnee Hidalgo County Irrigation District No. 1's Plea to the Jurisdiction be GRANTED;

IT IS FURTHER ORDERED, ADJUDGED and DECREED that all claims asserted by Hidalgo County Water Improvement District No. 3 in the above-entitled and numbered cause are hereby DISMISSED for lack of subject matter jurisdiction.

All relief not expressly granted herein is hereby DENIED. The clerk shall send a copy of this Order to counsel for the parties.

SIGNED this 3rd day of August, 2020.

Received from the Court
8/3/2020 2:39 PM

On _____

Initials: SEF


JUDGE PRESIDING

EXHIBIT A-7

CC:

Daniel G. Gurwitz, Meredith D. Helle, ATLAS, HALL & RODRIGUEZ, LLP, 818 W. Pecan Blvd., McAllen, Texas 78501, dgurwitz@atlashall.com mhelle@atlashall.com

W. Brad Anderson, JACKSON WALKER L.L.P., 100 Congress Avenue, Suite 1100, Austin, Texas 78701, Tel: (512) 236-2000, Fax: (512) 236-2002, banderson@jw.com

Randolph K. Whittington, LAW OFFICE OF RANDOLPH KIMBLE WHITTINGTON, 2014 E. Harrison Ave., Harlingen, Texas 78550, Tel: (956) 423-7200, Fax: (956) 423-7999, chagofuentes@rkwlaw.com

CAUSE NO. CCD-0517-D

HIDALGO COUNTY WATER	§	EMINENT DOMAIN PROCEEDING
IMPROVEMENT DISTRICT NO. 3	§	
Condemnor,	§	
	§	IN THE COUNTY COURT AT LAW NO. 4
V.	§	
	§	
HIDALGO COUNTY IRRIGATION	§	HIDALGO COUNTY, TEXAS
DISTRICT NO. 1	§	
Condemnee.	§	

**CONDEMNOR'S NOTICE OF TEMPORARY
SUSPENSION OF ORDER OF DISMISSAL AND EMERGENCY MOTION
FOR IMMEDIATE TEMPORARY POSSESSION OF EASEMENT PENDING APPEAL**

TO THE HONORABLE JUDGE OF SAID COURT:

Hidalgo County Water Improvement District No. 3 ("Water District 3"), Condemnor in the above-entitled and numbered cause, files the following Notice of Stay and Emergency Motion for Immediate Temporary Possession of Easement Pending Appeal, and in support thereof would respectfully show:

I. NOTICE OF SUSPENSION OF ENFORCEMENT OF ORDER OF DISMISSAL PENDING APPEAL

A. Procedural Background

1. This is a condemnation case related to the extension of Water District 3's raw water pipeline ("the Pipeline") currently being constructed in conjunction with the extension of Bicentennial Boulevard in the City of McAllen, Texas ("the City").¹ In August 2019, the City granted Water District 3 an easement for the Pipeline to be installed within the public right-of-way

¹ The construction of both the pipeline and Bicentennial Boulevard began in January 2020 pursuant to an *Interlocal Cooperation Agreement* between Water District 3 and the City and a construction contract between the City and its contractor, Texas Cordia Construction ("TCC"). Over the last eight months, the contractor has installed approximately 3,100 feet of the Pipeline. To date, Water District 3 has spent more than \$1,000,000 on this project. In no more than a few days, the contractor will have installed the Pipeline to a location at which it would begin crossing under Irrigation District 1's canal right-of-way using the subsurface easement which is the subject of this condemnation proceeding. See the affidavit of Frank Ferris, P.E., the engineer for Water District 3, attached to this motion as Exhibit D.

of Bicentennial Boulevard (see Exhibit D-1 attached hereto), and the City and Water District 3 executed an interlocal agreement governing construction of the Pipeline in that same public right-of-way (see Exhibit D-2 attached hereto).² In short order, Water District 3 secured a crossing agreement from Hidalgo County Irrigation District No. 2, an affected landowner along the Pipeline's route. The only other affected landowner along the route is Hidalgo County Irrigation District No. 1 ("Irrigation District 1").

2. In November 2019, following numerous efforts to secure permission to cross under Irrigation District 1's property, and after Irrigation District 1 had repeatedly refused to consent, Water District 3 was forced to file this condemnation proceeding, seeking a 0.05-acre subsurface only easement located within the public right-of-way of Bicentennial Boulevard and the right-of-way of Irrigation District 1's canal. The Court appointed Special Commissioners to assess the damages associated with the acquisition. The Special Commissioners awarded Irrigation District 1 \$1,900.00 as adequate compensation for the subsurface easement rights. Water District 3 promptly tendered the amount of the award into the registry of the Court and satisfied all statutory requirements necessary to be entitled to immediate possession of the condemned easement.

3. Irrigation District 1 then filed its Original Answer and Statement of Objections to the Special Commissioners' Award, effectively converting what was an administrative proceeding into a judicial action. On June 1, 2020, Irrigation District 1 followed up by filing its Plea to the Jurisdiction, asserting (erroneously) that governmental immunity protects it from condemnation proceedings.³ Based on its payment of the Special Commissioner's Award, Water District 3 then

² In addition to its right to construct the Pipeline pursuant to the easement and interlocal agreement with the City, Water District 3 has a statutory right to install the Pipeline in the public right-of-way of Bicentennial Boulevard under Section 49.220 of the Texas Water Code.

³ Irrigation District 1's attempt to prevent Water District 3 from exercising its statutory powers has not been limited to this erroneous claim of governmental immunity. Irrigation District 1 also sued the City for breach of contract in a separate proceeding and, although Water District 3 was not initially named as a party, Irrigation District 1 included a

filed its statutory Motion for Issuance of Writ of Possession (“Motion for Temporary Possession”), seeking temporary possession of the condemned property pending the litigation. Before awarding temporary possession to Water District 3, however, the Court signed an order on August 3 granting the Plea to the Jurisdiction (“the Order of Dismissal”). There are no precedents supporting the Order of Dismissal. No Texas appellate court, including the Texas Supreme Court, has ever held that an irrigation district or any other governmental body is entitled to immunity in a condemnation proceeding.

4. On August 12, 2020, Water District 3 then filed a Notice of Appeal of the Order of Dismissal. A true and correct copy of the Notice of Appeal is attached hereto as Exhibit A and is incorporated herein by reference.

B. Notice of Temporary Suspension of Order of Dismissal Pending Appeal

5. Enforcement of the Order of Dismissal is suspended pending the appeal. Water District 3 is a duly created Water Control and Improvement District organized under the laws of the State of Texas, having all powers, rights, privileges and functions conferred by general law upon any district created pursuant to Article 16, Section 59 of the Constitution of the State of Texas, and those specific powers enumerated in Chapter 49 and Chapter 51 of the Texas Water Code. Therefore, no supersedeas bond or other form of security is necessary to suspend enforcement of the Order of Dismissal. TEX. WATER CODE § 49.222(b); TEX. CIV. PRAC. & REM. CODE § 6.003(b)(1); TEX. R. APP. P. 25.1(h)(2). Instead, the filing of the Notice of Appeal, in and of itself, suspends enforcement of the Order of Dismissal.⁴

request to enjoin the construction of both Bicentennial Boulevard and the Pipeline. The City filed a third party petition against Water District 3. Although Water District 3 has recently filed claims against the City and Irrigation District 1, this condemnation action is the appropriate proceeding for Water District 3 to acquire an easement to cross under Irrigation District 1’s canal.

⁴ A true and correct copy of the 1921 Commissioners’ Court order creating Water District 3 is attached hereto as Exhibit B and is incorporated herein by reference. *See also* Exhibit C (true and correct copy of 1926 resolution

II. EMERGENCY MOTION FOR IMMEDIATE TEMPORARY POSSESSION OF THE EASEMENT PENDING APPEAL

A. Emergency Nature of the Motion

6. In the meantime, unless Water District 3 is awarded a writ of temporary possession pending the appeal, the subject matter of the appeal is threatened. Specifically, while Water District 3 is appealing this Court's Order of Dismissal, Irrigation District 1 is working to destroy the subject matter of the appeal (and the litigation altogether), thereby mooting the appeal. Together with the City, Irrigation District 1 is doing so by attempting to manipulate the boundaries of the contested easement - and therefore the Bicentennial Boulevard right-of-way itself - to exclude any easement awarded in the condemnation proceeding. Awarding Water District 3 immediate temporary possession pending the appeal - to which it was already entitled before this Court's Order of Dismissal - will preserve the subject matter of the appeal.

B. Factual Background

7. On June 17, 2020, almost an entire year after Water District 3 secured its own easement from the City, Irrigation District 1 and the City entered into an "Easement in Gross Agreement," recorded as Document No. 3121836 in the Official Records of Hidalgo County, Texas ("the Gross Agreement"). In the Gross Agreement, Irrigation District 1 conveyed an easement to the City for 0.40 acres out of Irrigation District 1's canal right-of-way "for the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of the road, sidewalks, curb and gutter, commonly known as the Bicentennial Boulevard project." A true and correct copy of the Gross Agreement is attached hereto as Exhibit D-3.

converting Water District 3 from a water control district to a water control and improvement district and referring to Water District 3 as "Hidalgo County Water Improvement District No. 3."

8. Although Bicentennial Boulevard is a public roadway, and the Gross Agreement conveys an easement for the public right-of-way, Irrigation District 1 and the City are attempting to use the Gross Agreement to torpedo Water District 3's right to install the Pipeline in that same area. First, the Gross Agreement relocates the eastern boundary of Bicentennial Boulevard right-of-way so that Water District 3's easement from the City and the condemned easement are no longer within the public right-of-way of Bicentennial Boulevard. Second, Irrigation District 1 and the City included certain (impermissible) restrictions on the use of the public's right-of-way designed to prohibit installation of the Pipeline. For example, the Gross Agreement prohibits "installation of any pipeline or any underground facility on, in or under [Irrigation District 1's] siphon," and further provides that if the City "installs or allows the installation of any pipeline or underground infrastructure on, in or under [Irrigation District 1's] siphon, the Easement granted here [*i.e.*, Bicentennial Boulevard and its right-of-way] is immediately extinguished and thereafter null and void ab initio." The obvious target of these activities is the Pipeline and Water District 3's right, just like any other utility, to install utility infrastructure in a public right-of-way, as well as its contractual right to construct the Pipeline in the Bicentennial Boulevard right-of-way. Third, the Gross Agreement provides that the easement and related rights are an "exclusive easement in gross for the benefit of City." Again, this will deprive various parties, including Water District 3, of their common law and statutory rights to install utilities and other facilities in the public right-of-way of the roadway in the vicinity of the easement Water District 3 is seeking to condemn in the instant proceeding. The Gross Agreement provides the City with an easement for the right-of-way of a public roadway. Restrictions like those included in the Gross Agreement by the City and

Irrigation District 1 which restrict the use of that public right-of-way are contrary to public policy and void.⁵

The City is continuing to construct the extension of Bicentennial Boulevard over the route of the Pipeline. If Water District 3 is deprived of its statutory rights to possess the condemned easement and to construct its Pipeline in the public right-of-way of a public roadway pending this appeal, the City will continue and complete construction of the Bicentennial Boulevard extension and Water District 3 will be unable to install the rest of the Pipeline without incurring prohibitive cost increases as described in the attached affidavit of Frank Ferris, P.E.

C. The Status Quo at the time the Court signed its Order of Dismissal is that the Water District 3 had a Statutory Right to Immediate Temporary Possession of the Easement Pending Appeal

9. Section 21.021(a) of the Texas Property Code governs a condemnor's right to possess property pending further litigation in condemnation actions. It mandates that, after Special Commissioners have made an award, a condemnor is entitled to take immediate possession of a condemnee's property pending the results of further litigation if the condemnor:

- 1) deposits all amounts awarded by the Special Commissioners into the Court's Registry subject to the order of the property owner;
- 2) deposits with the court a surety bond, issued by a surety company qualified to do business in this State, in the amount of money awarded by the Special Commissioners as damages, conditioned to secure the payment of an award of damages by the court in excess of the award of the Special Commissioners; and
- 3) executes a cost bond that has two or more good and solvent sureties approved by the judge of the court in which the proceeding is pending and conditioned to secure the payment of additional costs that may be awarded to the property owner by the trial court or on appeal.

⁵ *Harlingen Irrigation District Cameron County No. 1 v. Caprock Communications Corp.*, 49 S.W.3d 520, 532 (Tex. App.-Corpus Christi 2001, pet. denied).

TEX. PROP. CODE § 21.021(a)(1)-(3). Section 21.021(c) goes on to provide that if the condemning entity is a water improvement district, it is “not required to deposit a bond or the amount equal to the award of damages under Subdivisions (2) and (3) of [21.021] (a).”

The requirements outlined in section 21.021(a) are exhaustive; upon satisfaction, the condemning authority is entitled to immediate temporary possession, which may be effectuated by the Court’s issuance of a writ of possession.⁶ The decision to comply with section 21.021(a) and to take immediate possession is subject to the sole discretion of the condemnor, and a condemnee has no power to interfere with that right.⁷

The primary purpose of section 21.021 is to allow a party “to possess the condemned property pending the determination of fact issues through the judicial process.”⁸ The right to immediate possession stands even while a property owner challenges a condemnor’s eminent domain authority.⁹

⁶ See *City of Austin v. Whittington*, 384 S.W.3d 766, 773 (Tex. 2012) (“During that litigation, the condemnor may take possession of the condemned property by paying the damages determined by the special commissioners and executing a bond approved by the court to secure payment of potential additional costs that could be awarded at trial or on appeal.”); *Hooks v. Fourth Court of Appeals*, 808 S.W.2d 56, 60–61 (Tex. 1991) (orig. proceeding) (“A condemnor takes constructive possession of property when it deposits the commissioners’ award into the registry of the court”); *Murray v. Devco, Ltd.*, 731 S.W.2d 555, 557 (Tex. 1987) (“After the Commissioners have made an award in a condemnation proceeding, a condemnor may take possession of the condemned property pending litigation if the condemnor pays the award to the property owner or the court and executes a bond.”); *Anderson v. Teco Pipeline Co.*, 985 S.W.2d 559, 563 (Tex. App.—San Antonio 1998, pet. denied) (“After special commissioners have made an award, the condemnor may take possession of the disputed property pending further litigation if it deposits the amount of the award into the court’s registry.”); *Houston Lighting & Power Co. v. Klein Indep. Sch. Dist.*, 739 S.W.2d 508, 518–19 (Tex. App.—Houston [14th Dist.] 1987, writ denied); *Houston, B. & T. R. Co. v. Hornberger*, 141 S.W. 311, 313 (Tex. Civ. App.—Galveston 1911, no writ) (discussing the former Article 4471 of the Revised Statutes of the state of Texas of 1895); *Russell v. State*, Cause No. 02-14-00178-CV, 2015 Tex. App. LEXIS 3843, 2015 WL 1743745, at *3 (Tex. App.—Fort Worth Apr. 16, 2015, no pet.) (“A condemnor that complies with property code section 21.021 is rightfully in possession of the property and cannot be guilty of trespass.”); *State v. Gordon*, Cause No. 14-94-00868-CV, 1996 Tex. App. LEXIS 605, 1996 WL 65405, at *4 (Tex. App.—Houston [14th Dist.] Feb. 15, 1996, writ denied);.

⁷ *Gordon*, 1996 WL 65405, at *4.

⁸ *In re Tex. Rice Land Partners, Ltd.*, 402 S.W.3d 334, 339 (Tex. App.—Beaumont 2013, no pet.).

⁹ See *Denbury Green Pipeline-Texas, LLC v. Tex. Rice Land Partners, Ltd.*, 510 S.W.3d 909, 912 (Tex. 2017) (“While the suit was pending, Denbury Green took possession of Texas Rice’s property pursuant to section 21.021(a) of the Texas Property Code, which allows a condemnor to take possession even while the property owner challenges the condemnor’s eminent domain authority. Denbury Green then surveyed for and constructed the Green Line.”) (internal

10. In the case at bar, while Irrigation District 1 has challenged Water District 3's eminent domain authority in its Original Answer and Statement of Objections, the Court decided instead to dismiss the case for want of jurisdiction based upon governmental immunity. This distinction, however, does not affect the status quo at the time the Order of Dismissal was signed: Water District 3 was entitled – and still is because of the appellate stay – to immediate temporary possession of the easement that is the subject of the condemnation pending the final disposition of the litigation. *E.g. In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) (defining status quo as the “last, actual, peaceable, non-contested status which preceded the pending controversy.”). The “pending controversy” is whether Irrigation District 1 is entitled to governmental immunity in condemnation proceedings. In turn, Water District 3's absolute statutory right to immediate temporary possession of the condemned easement pursuant to Section 21.021 was the “last, actual, peaceable, non-contested status which preceded the pending controversy.” This is what the status quo should therefore be for purposes of this emergency motion.¹⁰

11. Moreover, Irrigation District 1 has an adequate legal remedy in the ultimate event Water District 3 is not entitled to permanent possession. If the Court of Appeals determines that Irrigation District 1 does not have governmental immunity, the case will be remanded to determine the merits. If it is ultimately decided that Water District 3 does not have eminent domain authority, Irrigation District 1's legal remedy for Water District 3's temporary possession during the litigation is found in section 21.044 of the Property Code. That section allows the Court to award

citation omitted); *Hornberger*, 141 S.W. at 314 (“The right is expressly given the corporation seeking to condemn to enter upon and take possession of the property ‘pending litigation,’ and the right of the landowner to his writ of restitution . . . only accrues when upon a ‘final decision of the case’ it is determined that the right to condemn the property does not exist.”).

¹⁰ Water District 3's statutory right under section 21.021 to immediate temporary possession pending the ultimate outcome of the condemnation proceeding is not contestable. The very purpose of the statute is to award the condemnor temporary possession *during the litigation*. Until the litigation is concluded, therefore, Water District 3's statutory right of temporary possession is continuous and ongoing.

the property owner damages that resulted from the condemnor's temporary possession. The Texas Supreme Court has held that this procedural safeguard is sufficient to protect property owners like Irrigation District 1, who challenge an entity's eminent domain authority after the entity has already taken possession.¹¹ Said another way, a condemnee's right to damages under section 21.044 is an adequate remedy at law, and a condemnee is not entitled to a *de facto* injunction preventing a condemnor from taking possession by merely alleging that the condemnor lacks eminent domain authority.¹²

CONCLUSION

Water District 3 has strictly complied with Section 21.021 of the Property Code and is entitled to take immediate temporary possession of the property described in its petition pending further litigation, including the appeal. Water District 3 has deposited all amounts awarded by the Special Commissioners into the Court's Registry subject to the order of Condemnee. Water District 3 has also complied with the rules governing perfection of appeal by a governmental entity. Specifically, Water District 3 has timely filed a notice of appeal, the effect of which is to suspend the Court's Order of Dismissal on the Plea to the Jurisdiction pending the appeal. Accordingly,

¹¹ See *Harris County v. Gordon*, 616 S.W.2d 167, 169 (Tex. 1981) ("The Court of Civil Appeals wrote that the County did not have the authority to condemn for a fee simple, and on this basis granted the temporary injunction. However, this action ignores the landowner's remedy provided by Article 3268(3). This statutory remedy provides for damages to the landowner for the use of the land when the condemnor does not have the right to condemn. The only limit on this award is the value of the property. The Gordons have an adequate remedy at law if it is later determined that Harris County did not have authority to condemn for a fee simple. Therefore, the Court of Civil Appeals erred in granting the injunction on the grounds stated.").

¹² See *Harris County*, 616 S.W.2d at 169; *In re JDN Real Estate-McKinney, L.P.*, 211 S.W.3d 907, 915–16 (Tex. App.—Dallas 2006, orig. proceeding) ("Pursuant to section 21.044(a) of the Texas Property Code, if a condemnor took possession of property pending litigation and did not have the right to condemn that property, the court may award the property owner the damages that resulted from the condemnor's temporary possession. This statutory remedy provides for damages to the property owner for the use of the property when the condemnor does not have the right to condemn that property. As a result, this statutory remedy provides a property owner with an adequate remedy by appeal if it is later determined the condemnor did not have the authority to condemn the property.") (internal citations omitted); *Gordon*, 1996 WL 65405, at *4 ("[T]he property code permits a condemnor, in its sole discretion, to elect to make a deposit equal to the commissioners' award and take immediate possession of the premises, instead of waiting for the jury's decision."); *City of Houston*, Cause No. B14-85-646-CV, 1985 Tex. App. LEXIS 12630, at *8 (Tex. App.—Houston [14th Dist.] Dec. 19, 1985, no writ).

Water District 3 may immediately take possession of the property described in the petition, and a writ of possession should be issued by the Clerk of this Court, commanding the sheriff or constable of this county or any constable within Texas to deliver possession of the property to Water District 3, and to make return of the writ, showing its due execution.

PRAYER

Condemnor Hidalgo County Water Improvement District No. 3 respectfully prays that this Court enter an order directing the Clerk of the Court to issue a writ of possession commanding the sheriff or constable to deliver possession of the property to Water District 3 pending the appeal, and grant Water District 3 all other relief, at law or in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

Frank Weathered P.C.

P.O. Box 6935

Corpus Christi, TX 78466

Phone: (361) 904-3157

By: /s/ Frank Weathered

Frank Weathered

State Bar No. 20998600

Email: frank@weatheredlaw.com

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State Bar No. 24055106

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Randolph K. Whittington

State Bar No. 21404500

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Phone: (956) 423-7200

Fax: (956) 423-7999

Email: chagofuentes@rkwlaw.com

ATTORNEYS FOR CONDEMNOR

HIDALGO COUNTY WATER

IMPROVEMENT

DISTRICT NO. 3

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this filing was served on the following counsel of record via the Court's electronic filing system on August 17, 2020:

Daniel G. Gurwitz
Atlas Hall & Rodriguez, L.L.P.
818 Pecan
McAllen, TX 78501
dgurwitz@atlashall.com

/s/ Frank Weathered
Frank Weathered

CAUSE NO. CCD-0517-D

HIDALGO COUNTY WATER IMPROVEMENT DISTRICT NO. 3 Condemnor,	§ § § § § § § § § §	EMINENT DOMAIN PROCEEDING IN THE COUNTY COURT AT LAW No. 4 HIDALGO COUNTY, TEXAS
v.		
HIDALGO COUNTY IRRIGATION DISTRICT NO. 1 Condemnee,		

CONDEMNOR’S NOTICE OF APPEAL

1. Hidalgo County Water Improvement District No. 3 (“Water District 3”), Condemnor herein, intends and desires to appeal from the Court’s Order Granting Condemnee’s Plea to the Jurisdiction (“the Order of Dismissal”), which was signed on August 3, 2020. The Order of Dismissal dismisses all parties and claims in the lawsuit. It is, therefore, a final judgment.¹

2. Plaintiff is appealing to the Thirteenth Court of Appeals.

3. Since Water District 3 is a duly created Water Control and Improvement District organized under the laws of the State of Texas, no supersedeas bond or other form of security is necessary to suspend the Order of Dismissal pending this appeal. TEX. CIV. PRAC. & REM. CODE § 6.003(b)(1); TEX. WATER CODE § 49.222(b); TEX. R. APP. P. 25.1(h)(2). Instead, the filing of this notice has the effect of suspending the Order of Dismissal pending appeal.

¹ In the unlikely event the Court of Appeals determines that the Order of Dismissal is interlocutory, then in the alternative, Water District 3 hereby gives notice that it is appealing the Order of Dismissal pursuant to TEX. CIV. PRAC. & REM. CODE § 51.014(a)(8), in which case the appeal is accelerated. The appeal is not a parental termination or child protection case.

Respectfully submitted,

FRANK WEATHERED, P.C.

Attorney-at-Law

P.O. Box 6935

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(361) 904-3157 (Telephone)

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By: /s/ Frank Weathered

SBN 20998600

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ATTORNEYS FOR CONDEMNOR,

HIDALGO COUNTY WATER IMPROVEMENT

DISTRICT NO. 3

CERTIFICATE OF SERVICE

A copy of this document was served by electronic service on August 12, 2020, upon the following:

Ms. Kathy S. Mills
Clerk, Thirteenth Court of Appeals
Nueces County Courthouse
901 Leopard St., 10th Floor
Corpus Christi, Texas 78401

Daniel G. Gurwitz
Atlas Hall & Rodriguez, L.L.P.
818 Pecan
McAllen, TX 78501
dgurwitz@atlashall.com

/s/ Frank Weathered
Frank Weathered

C/Copy of Com. Court Minutes. Hidalgo County Water Improvement District No. 3.

THE STATE OF TEXAS:

COUNTY OF HIDALGO: BE IT REMEMBERED, that there was begun and holden a regular term of the Honorable county Commissioners' court in and for Hidalgo County, Texas, at the Court House thereof, in the City of Edinburg on the 14th day of March A.D. 1921.

Court was opened by proclamation of the sheriff at the Court house door thereof at nine o'clock A.M.

Present;

Hon. George P. Brown, County Judge.

W.D. Chaddick, County Commissioner Precinct No. 1,

Marvin Evans County Commissioner of Precinct No. 2,

George Brooks, County Commissioner of Precinct No. 3,

W.L. Lipscomb, County Commission of Precinct No. 4,

R.J. Kerwin, County Clerk,

J.C. Epperson, County Attorney,

A.Y. Baker, Sheriff

Whereupon, the following proceedings were had, to-wit: "BE IT REMEMBERED, THAT a regular term of the Honorable Commissioners' Court of Hidalgo County, Texas, convened and held at the Court house thereof, in the town of Edinburg, in the County of Hidalgo on this, the second Monday of March A.D. 1921, being the 14th day of March A.D. 1921.

There were present:

Hon George P. Brown, County Judge

W.D. Chaddick, County Commissioner Precinct No. 1

Marvin Evans, County Commissioner of Precinct No. 2,

George Brooks, County Commissioner of Precinct No. 3,

W.L. Lipscomb, County Commission of Precinct No. 4.

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R.J. Kerwin, County Clerk,

J.C. Epperson County Attorney,

A.Y. Baker, Sheriff, a quorum being present.

The court was opened by proclamation of the Sheriff as provided by law, whereupon the following proceedings were had, to wit:

"In the Matter of Hidalgo County, Water Improvement District Number Three."

And now, on this, the 14th day of March A.D. 1921, being the second Monday in said month, at a regular term of the Honorable Commissioners' Court of Hidalgo County, Texas, in the above matter, there came on to be considered, examined and canvassed the returns of a certain special election held on Saturday, the 26th day of February A.D. 1921, in a certain election precinct in Hidalgo County, Texas, embracing the territory of the proposed Hidalgo County Water Improvement District Number Three, said election precinct having been created and established and said election held, in accordance with and pursuant to an order of this Court made and entered on the 10th day of January A.D. 1921, for the purpose of determining whether said Hidalgo County Water Improvement District Number ~~Two~~ ^{Three} would be established, and for the election of five directors for said District. And this court having examined, considered and canvassed said returns of said election, and it appearing to the Court that said returns are in all things as required by law and were made and returned in the manner and time provided by law; that said election was held and conducted in all respects as provided by law and the said order of this Court; and it further appearing to the court that there were cast at the said election sixty-seven (67) votes, of which number fifty-four (54) votes were cast "FOR THE WATER IMPROVEMENT DISTRICT" AND of which number three (3) votes were cast "AGAINST THE WATER IMPROVEMENT DISTRICT", and it appearing to the Court, and this Court now here finds that the majority of said votes were cast in favor of the establishment and organization of said District.

NOW THEREFORE, The court here now finds, declares and decrees, that the results of said election is in favor of the establishment of said Hidalgo County Water Improvement District Number Three. And this court having canvassed the Votes cast at said election for Directors of said Hidalgo County Water Improvement District Number Three: and it appearing to the Court that at said election there were cast for the following named persons the number of votes set opposite their respective names for directors of said District, to wit:

H.F. Schiffbaur	1
J.W. Ewing	46
E.H. Smith	33
Gordon Griffin	65
F.B. Freeland	45
T.G. Murrow	51
F.G. Grove	30
Dr. Osborne	22
L.C. Kelly	5
J. Collavo	30
Ralph Osborne	1
J.A. Lelacheur	2
O.C. Peterson	2
Tom Ewing	1

Now, therefore, the court here now finds, declares and decrees that J.W. Ewing, E.H. Smith, Gordon Griffin, F.B. Freeland and T.G. Murrow received the highest number of votes cast at said election for said office of Directors of said Water Improvement District; and, therefore, the said J.W. Ewing, E.H. Smith, Gordon Griffin, F.B. Freeland and T.G. Murrow, are now here declared to have been duly and legally elected as such Directors of said Hidalgo County Water Improvement District Number Three; and certificate of their election shall be issued to them as provided by law; and

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WHEREAS, the result of said election being infavor of the establishment of said Hidalgo County Water Improvement District Number Three, as heretofore found and decreed:

IT IS THEREFORE, now here by the Court further ordered and decreed as follows:

"In the Matter of the Petition of J. A. Lelacheur and eighty (80) others praying for the establishment of a water improvement district as in said Petition described and named Hidalgo County Water Improvement District number Three".

AND BE IT KNOWN, that an election was called for that purpose in said District and held on the 26th day of February A.D. 1921, and a majority of the resident tax payers voting thereat voted in favor of the creation of said District".

NOW THEREFORE, It is declared that said District has been legally established under the name of "Hidalgo County Water Improvement District Number Three" with the following metes and bounds":

Beginning at the S.W. corner of Lot 13 of Section 2 of the Hidalgo Canal Company's subdivision of Porciones 64, 65, and 66, Hidalgo County, Texas; for the S.W. corner of this survey;

Thence S. 80-45 E with the South line of Lots 13 and 14, Section 2, 2928 feet;

Thence N 09-15 E. 2640 feet to the N.E. corner of Lot 11, Section 2;

Thence S 80-45 E 2853 to the W. line of canal right of way of the Rio Grande Company's Main Canal;

Thence N 09-15 E with the W. line of said canal right of way 10,560 feet to the S.E. corner of Lot 8, Section 4 of the Hidalgo Canal Company's subdivision of Porciones 64, 65 and 66;

Thence with the South line of said Lot 8, N 80-45 W 1389 feet more or less to the S.W. corner of said Lot 8;

Thence N 09-15 E 1320 feet to the N.W. corner of said Lot 8;

Thence S 80-45 E 1389 feet more or less to the West line of the Rio Grande Canal Company's right-of-way;

Thence with the West line of said right-of-way N 09-15 E 4946.8 feet more or less to the intersection with the south right-of-way line of Hidalgo County Drainage District No. 1;

Thence with said right-of-way of said Drainage District N 82-55 W 1052 feet to a point of curve;

Thence following a curve to the right, whose radius is 2590 feet, for a distance of 1560 feet to a point of tangent;

Thence N 36-15 W 1280 feet to a point of curve;

Thence following a curve to the left, whose radius is 2070 feet, for a distance of 1730 feet to a point of tangent;

Thence N 70-00 W 111.4 feet more or less to the intersection of the south right-of-way line of Drainage District No. 1, and the East right-of-way line of the McAllen Main Canal; X

Thence with said right-of-way line of said McAllen Main Canal N 09-15 E 1221.4 feet to the intersection of the north-right-of-way line of Drainage District No. 1;

Thence with said North right-of-way line of said Drainage District No. 1 S. 70-00 E 1020 feet to a point of curve;

Thence following a curve to the right whose radius is 3270 feet, for a distance of 1730, feet, to a point of tangent;

Thence S. 36-15 E 1280 feet to a point of curve;

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Thence following a curve to the left whose radius is 1390 feet, for a distance of 840 feet to the East line of Lot, 2, Section 5 of the Hidalgo Canal Company's subdivision of Porciones 64, 65 and 66;

Thence with the East line of said Lot 2, Section 5, and East line of Lot 15, Section 6 N 09-15 E 1260 feet to the N.E. corner of the $S\frac{1}{2}$ of Lot 15, Section 6;

Thence with the North line of the $S\frac{1}{2}$ of Lot 15, Section 6, N 80-45 W. 1464 feet to the N.W. corner of the $S\frac{1}{2}$ of said Lot 15, Section 6;

Thence with the West line of $S\frac{1}{2}$ of said Lot 15, Section 6, S 09-15 W. 660 feet to the S.W. corner;

Thence with the South line of Lot 14, Section 6, N 80-45 W 1464 feet to the S.W. corner of said lot;

Thence with the West line of said Lot 14, N 09-15 E 660 feet to the N.W. corner of the $S\frac{1}{2}$ of said Lot 14, being also the S.E. corner of $N\frac{1}{2}$ of Lot 13, Section 6;

Thence with the South line of the $N\frac{1}{2}$ of Lot 13, Section 6, N 80-45 W 1464 feet to the East line of the McAllen Main Canal right-of-way;

Thence with said McAllen Main Canal right-of-way N 09-15 E 660 feet to the N.W. corner of Lot 13, Section 6;

Thence with the North line of Lot 13, Section 6, S 80-45 E 1464 feet to the N.E. corner of said lot;

Thence with the East line of Lot 13, Section 6, S 09-15 W 660 feet to the S.E. corner of the $N\frac{1}{2}$ of said Lot 13, Section 6, being also the N.W. corner of the $S\frac{1}{2}$ of Lot 14, Section 6;

Thence with the N. line of the $S\frac{1}{2}$ of Lot 14, Section 6, S 80-45 E 1464 feet to the N.E. corner of the $S\frac{1}{2}$ of Lot 14, being also the S.W. corner of the $N\frac{1}{2}$ of Lot 15, Section 6;

Thence with the West line of Lots 15 and 10, Section 6, N 09-15 E 1980 feet to the N.W. corner of Lot 10, Section 6;

Thence with the North line of Lot 10, Section 6, S. 80-45 E 1464 feet to the N.E. corner of said Lot 10;

Thence with the east line of said Lot 10, S 09-15 W 1320 feet to the S.E. corner of said Lot 10, being also the S.W. corner of Lot 9, Section 6;

Thence with the south line of Lot 9, Section 6, of the Hidalgo Canal Company's subdivision of Porciones 64, 65 and 66, S. 80-45 E 1464 feet to the West line of the Rio Grande Canal Company's right-of-way;

Thence with the West right-of-way line of said canal company's right-of-way, N. 09-15 E 404.12 feet to the N.E. corner of Lot I section 13 of the Hidalgo Canal Company's subdivision of Porciones 64, 65 and 66;

Thence with the North line of Lots 1, 2, 3 section 13, N 80-45 W 4392 feet to the N.W. corner of Lot 3, Section 13;

Thence with the West line of Lots 3, 6 and 11, Section 13, S 09-15 W 3960 feet to the S.W. corner of Lot 11, Section 13, being also the N.E. corner of Lot 13, Section 13;

Thence with the North line of Lot 13, Section 13, N 80-45 W 1464 feet to the East right-of-way line of the McAllen Main Canal;

Thence with the East right-of-way line of said McAllen Main Canal, S 09-15 W 22,280 feet to the intersection with the North city line of the Town of McAllen;

Thence with the North City line of the Town of McAllen, S. 80-45 E 2917 feet to the North East corner of the City of McAllen;

Thence with the East line of the City of McAllen S. 09-15 W 5405-2 feet to the S.E. corner of the City of McAllen;

Thence with the south line of the City of McAllen N 80-45 W 1437 feet to the N.E. corner of Nelson Addition;

Thence with the East line of Nelson's Addition S 09-15 W 855 feet to the South East corner of Nelson's Addition;

Thence with the South line of Nelson's Addition N 80-45 W 1511 feet to the East right-of-way line of the McAllen Main Canal;

Thence with the East right-of-way line of said McAllen Main Canal, S. 09-15 W 30651-6 feet to the S.W. corner of Lot 13, Section 2, Described in the first paragraph of these notes;

Thence with the south line of Lots 13, 14 and 15, Section 2, and the North right-of-way line of a branch of the McAllen Main Canal S. 80-45 E 3194 feet to the N.W. corner of Lot 2, Section 1;

Thence with the West line of Lot 2, Section 1, S 09-15 W 200 feet more or less to the intersection of the south right-of-way ^{line} of said branch of the McAllen Main Canal;

Thence with said south right-of-way line of said Branch of the McAllen Main Canal N 80-45 W 5194 feet more or less;

Thence with the S. right-of-way line of said McAllen Main Canal, N 16-00 W 1900 feet more or less, to the south line of Lot 12 Section 8, of the Rio Bravo Canal Company's subdivision of Porcion 63;

Thence with the south line of said Lot 12, Section 8 N 80-45 W 600 feet more or less to the S.W. corner of said Lot 12, Section 8;

Thence with the West line of said Lot 12, Section 8 N 09-15 E 1320 feet more or less, to the N.W. corner of the S $\frac{1}{2}$ of said Lot 12;

Thence with the North line of S $\frac{1}{2}$ of said Lot 12, S 80-45 E 1320 feet more or less to the N.E. corner of S $\frac{1}{2}$ of said Lot 12;

Thence with the East line of said Lot 12 and the West line of Lot 39 of the C. E. Hammond Subdivision S 09-15 W 2500 feet more or less to the North right-of-way line of the McAllen Main Canal;

Thence with the right-of-way line of said McAllen Main Canal S 16-00 E 600 feet more or less to the south line of Lot 39 of the C. E. Hammond Subdivision;

Thence with the S. line of said lot 39 of the C. E. Hammond subdivision S 80-45 E 1450 feet more or less to the West right-of-way line of the McAllen Main Canal.

Thence with the West right-of-way line of the McAllen Main Canal, N 09-15 E 64,446 feet more or less to the North west corner of the McAllen Main Canal Right-of-way;

Thence with the North right-of-way lines of the McAllen Main Canal S 80-45 E 200 feet to the N.W. corner of Lot 13, Section 14, of the Hidalgo Canal Company's subdivision of Porciones 63, 64 and 65,

Thence with the East right-of-way line of the McAllen Main Canal S 09-15 W 64,446 feet more or less to the point of beginning of this survey, the S.W. corner of Lot 13, Section 2, Hidalgo Canal Company's subdivision of Porciones 63, 64 and 65.

Including 7,718.00 acres, more or less, of which 327.00 acres; more or less, is included in the McAllen Main Canal right-of-way, leaving a net acreage for this district of 7,387.00 acres, more or less.

It is further ordered by the Court, that the Clerk of this Court, be and he is hereby, directed to make a certified copy of this order which shall be filed with the County Clerk of Hidalgo County, Texas, in which County and District is situated,

and said County Clerk shall cause said certified copy of this Order to be duly recorded in the deed records of said Hidalgo County and properly indexed in the same manner provided for recording and indexing of deeds.

Read, approved and ordered entered.

Geo. P. Brown
County Judge

Marvin Evans
Commissioner Precinct No. 2

W.D. Chaddick
Commissioner of Precinct No. 1

Geo. Brooks
Commissioner of Precinct No. 3

W.L. Lipscomb
Commissioner of Precinct No. 4

THE STATE OF TEXAS:

COUNTY OF HIDALGO: I, R.J. Kerwin, Clerk County Court, and Ex-officio Clerk of the Commissioner's Court, in and for Hidalgo County, Texas, do hereby certify that the above and foregoing is a true and correct copy of order of the Commissioners Court canvassing the results of a special election for directors of said District "Hidalgo County Water Improvement District Number Three" as the same appears of Record in the Commissioners Court Minutes of Hidalgo County, Texas in Volume "F" pages 572, et seq.,

Given under my hand and seal of office this the 12th day of May, A.D. 1921.

SEAL

R.J. Kerwin
County Clerk and Ex-officio Clerk of the Commissioners Court of Hidalgo County, Texas.

By A.E. Chavez, Dy.

Filed for record this the 19th day of May 1921 at 9.28 o'clock A.M.

R.J. Kerwin Clerk County Court
Hidalgo Co. Texas.

By A.E. Chavez, Deputy

Recorded this the 3rd day of June 1921 at 4.40 o'clock P.M.

SEAL

County Clerk

McAllen, Texas, March 9th, 1926.

BE IT REMEMBERED, that the Board of Directors of Hidalgo County Water Improvement District No. 3 met in special session at the office of said District in McAllen, Texas, being the regular place for the holding of such meetings, on Tuesday, March 9th, A. D. 1926 with the following directors present and participating therein:

Mr. T. G. Murrow, President, Mr. H. F. Schiffbauer, Secretary, Mr. John Baldwin, Mr. I. G. Cook and Mr. A. D. Leavell.

Mr. Robert Henderson, District Manager, Mr. Granger W. Smith Jr., District Assessor and Collector and Mr. B. D. Kimbrough, one of the District's attorneys, were also present.

The President called the meeting to order, stated a quorum was present, and stated that this meeting had been called for the following purposes, to-wit:

(a) To determine whether or not the Board of Directors should adopt a resolution declaring Hidalgo County Water Improvement District No. 3 to be a Water Control and Improvement District under the provision of Chapter 25 of the general laws of the 39th Legislature's regular session 1925.

(b) To execute the deed and close the deal between Hidalgo County Water Improvement District No. 3 and David J. Doyle, wherein the said Doyle is purchasing from said District Lots 3 and 4 in the Northwest Quarter of Section No. 3 of Hidalgo Canal Company's Subdivision, Porciones 64, 65 and 66 in Hidalgo County, Texas, said deal having already been entered into in the form of written contract.

(c) For the purpose of executing a deed to Hidalgo County to the East 15 feet of Lot 14 and the West 15 feet of Lot 15 in Section 4 Hidalgo Canal Company's Subdivision, Porciones 64, 65 and 66, for road purposes.

(d) For the purpose of executing a quitclaim deed to C. F. Thayer to the South 20.32 acres of Lot No. 1 and the South 22.16 acres of Lot No. 2 and all of Lots No. 5 and 6 in Section No. 3 of Hidalgo Canal Company's Subdivision, Porciones 64, 65 and 66 in Hidalgo County, Texas.

Upon motion by Mr. I. G. Cook, seconded by Mr. John Baldwin, and unanimously carried, the President and Secretary of the Board of Directors was instructed to execute, acknowledge and deliver the deed to the said David J. Doyle upon the delivery to the Secretary of the Board of Directors of the notes, as set out in the contract with Mr. Doyle, and the payment of the \$1,000.00 cash payment to be made.

The President and Secretary were also instructed by unanimous vote of the Board of Directors to execute and deliver the quitclaim deeds to Hidalgo County above referred to.

Upon motion by Mr. Leavell, seconded by Mr. Cook, and unanimously carried, the President and Secretary were instructed to execute a quitclaim deed conveying the above described property to C. F. Thayer.

The following resolution declaring Hidalgo County Water Improvement District No. 3 to be a Water Control and Improvement District was passed and ordered entered upon the minutes of the said Board by a vote of four for its passage and none against its passage:

R E S O L U T I O N .

WHEREAS, the Board of Directors of Hidalgo County Water Improvement District No. 3 deems it to the best interest of said district that it become and be converted into a Water Control and Improvement District; therefore,

BE IT RESOLVED by the Board of Directors of Hidalgo County Water Improvement District No. 3, that said district be, and is hereby declared to be, a Water Control and Improvement District under the provisions of Chapter 25 of the General Laws of the Thirty-ninth Legislature, Regular Session, 1925.

Notice of the adoption of this Resolution shall be given by publication thereof in a newspaper published in Hidalgo County once a week for two consecutive weeks.

Upon motion by Mr. Baldwin and seconded by Mr. Cook, the meeting adjourned at 8:30 o'clock P. M.

APPROVED:

T. G. Hurrow
President

ATTEST:

H. F. Schaffner
Secretary

CAUSE NO. CCD-0517-D

HIDALGO COUNTY WATER
IMPROVEMENT DISTRICT NO. 3
Condemnor,

v.

HIDALGO COUNTY IRRIGATION
DISTRICT NO. 1
Condemnee,

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EMINENT DOMAIN
PROCEEDING

IN THE COUNTY COURT
AT LAW No. 4

HIDALGO COUNTY, TEXAS

AFFIDAVIT OF FRANK A. FERRIS, P.E.

State of Texas
County of Cameron

On this 12th day of August, 2020, personally appeared Frank A. Ferris, who is known to me, and after being duly sworn upon his oath, did state to me the following:

1. My name is Frank A. Ferris. I am over the age of twenty-one years and am fully competent and qualified to give this statement and to make this affidavit. The factual statements in this affidavit are within my personal knowledge and are true and correct.

2. I am a Professional Engineer registered and authorized to practice in the State of Texas. I am an owner and the President of Ferris, Flinn & Medina, LLC, an engineering and surveying firm with offices in Cameron County, Texas. My firm and I have been engaged as the engineers for Hidalgo County Water Improvement District No. 3 ("Water District 3") for many years. We also provide engineering and surveying services for other water districts throughout the Rio Grande Valley and, in doing that work, I have become familiar with the provisions of the *Texas Water Code* applicable to those districts. In my capacity as engineer for Water District 3, I have become thoroughly knowledgeable about the operations, facilities, contracts and agreements, and proposed projects of that district.

EXHIBIT D

3. In August 2018, the board of directors of Water District 3 learned of plans by the City of McAllen ("City") to extend a public roadway, known as Bicentennial Boulevard, northward from Trenton Road to State Highway 107 (the "Bicentennial Extension") and the City's need to purchase right-of-way from Water District 3 for that extension. In response, Water District 3 began consideration of the construction of an irrigation water pipeline along the Bicentennial Extension which could create a connection to the main canal of Hidalgo County Irrigation District No. 1 ("Irrigation District 1"). At the request of Water District 3, I began preparing and reviewing survey plats of property to be conveyed to City for the Bicentennial Extension and property for a pipeline in the right-of-way of that roadway. I also designed a proposed pipeline extension and connection and prepared drawings, plans, and specifications for the construction of that project (the "Pipeline Extension").

4. Despite an initial interest and positive response, Irrigation District 1 ultimately rejected Water District 3's offer to connect the two districts' systems. Subsequently, Water District 3 requested that I redesign the project to include a 48-inch PVC pipeline extending north under the Irrigation District 1 main canal and siphons in a 66-inch steel casing and continuing in the public right-of-way of Bicentennial Boulevard to State Highway 107. After Irrigation District 1's rejection, Water District 3 had discussions with potential customers and water users who could benefit from the purchase or delivery of irrigation water if Water District 3 were to construct the Pipeline Extension.

5. Borings and installation of pipelines and other utilities under roadways, canals and other public works similar to the boring and crossing contemplated as part of the Pipeline Extension are commonplace. In my experience and professional opinion, the proposed boring will not damage or adversely affect Irrigation District 1's siphons or other infrastructure or property.

6. Beginning in September 2018 and continuing over many months, Water District 3 and the City engaged in difficult and sometimes contentious negotiations relating to the sale of land to the City for the Bicentennial Extension and the City's cooperation with Water District 3 in the construction of the Pipeline Extension. In August 2019, those negotiations were finally and successfully concluded. Water District 3 agreed to sell the City 2.53 acres (110,207 square feet) of land for the Bicentennial Extension and to reduce the sales price by \$309,572 from the appraised value in exchange for the City granting an easement to Water District 3 for the Pipeline Extension (the "Pipeline Easement"). In addition, the City and Water District 3 executed an interlocal cooperation agreement (the "Interlocal Cooperation Agreement") providing, among other things, for (i) the City to award a competitively-bid contract for the construction of both the Bicentennial Extension and the Pipeline Extension and (ii) Water District 3 to furnish the pipe materials and pay for the labor and other materials for the Pipeline Extension. Water District 3 agreed to secure its payment obligation by acquiring and delivering an irrevocable letter of credit to the City.

7. The Pipeline Easement is recorded as Document No. 3044049 in the Official Records of Hidalgo County, Texas, and a true, correct, and complete copy of the executed and recorded Pipeline Easement is attached to this affidavit as Exhibit D-1 and is incorporated herein for all purposes. The Pipeline Easement is ten feet in width, extends across and includes the Irrigation District 1 main canal right-of-way, purports to be located entirely within the public right-of-way of Bicentennial Boulevard, and grants Water District 3 the right to construct the Pipeline Extension in that right-of-way.

8. A true, correct, and complete copy of the executed Interlocal Cooperation Agreement is attached to this affidavit as Exhibit D-2 and is incorporated herein for all purposes. In the Interlocal Cooperation Agreement, the City approves plans for and consents to the

construction of the Pipeline Extension in the Bicentennial Boulevard right-of-way and agrees to include the construction of that project in the competitive bid package and the awarded contract.

9. After receipt of competitive bids, the City awarded the construction contract, including the Pipeline Extension and the crossing under Irrigation District 1's canal and siphons, to Texas Cordia Construction, LLC ("Texas Cordia") and obtained Texas Department of Transportation ("TxDOT") approval of the project and the construction contract. The City and Texas Cordia finalized the construction contract in December 2019.

10. The Texas Cordia contract price for the Pipeline Extension was \$679,701. As required by the Interlocal Cooperation Agreement, Water District No. 3 purchased 48-inch PVC pipe for \$786,000 and secured the issuance by Texas Regional Bank of an irrevocable \$800,000 letter of credit which was delivered to the City. Before construction had begun, Water District 3 had spent or obligated itself for more than \$1,500,000 including legal and engineering fees.

11. The design of and plans for the Pipeline Extension would cross Irrigation District 1's canal right-of-way and would require a boring under siphons connecting the east and west segments of an open canal. I delivered a copy of the construction plans to and met with Isael Posada, P.E., the engineer for Irrigation District 1, in connection with a request by Water District 3 for a crossing permit. Although Mr. Posada gave me the impression that he was satisfied with the design and that he did not believe it would adversely impact Irrigation District 1's infrastructure, the board of directors of Irrigation District 1 refused to issue the permit.

12. On March 16, 2020, at the suggestion of the City's attorney, Kevin Pagan, I met with Isael Posada, P.E. and the City's engineers to discuss Irrigation District 1's concerns or objections to the boring and crossing under its main canal and siphons. The only issues raised by Mr. Posada were (i) the proximity of the receiving pit for the boring to the north side of the

Irrigation District 1's canal right-of-way and a canal embankment and (ii) the vertical separation between the bottom of the siphons and the top of the 66-inch steel casing around the 48-inch PVC pipeline. The day after that meeting, I prepared and delivered to the engineers for the City and Irrigation District 1 a set of revised construction plans and a proposed change order to the construction contract with Texas Cordia. The revised plans and change order addressed Mr. Posada's concerns by (i) lengthening the boring and steel casing and moving the receiving pit farther away from Irrigation District 1's right-of-way and embankment and (ii) increasing the vertical separation between the siphons and the steel casing.

13. Texas Cordia prepared a price proposal for the revised construction plans and a change order to its construction contract with the City (the "Change Order"). On May 29, 2020, the board of directors of Water District 3 met and approved the Change Order and a purchase of additional PVC pipe. To satisfy the concerns of Irrigation District 1, as expressed by Mr. Posada, Water District 3 agreed to the resulting increase of approximately \$520,440 in the overall cost for the Pipeline Extension. On June 1, 2020, based on the recommendation of the City's engineers, the McAllen City Commission met and approved that same Change Order authorizing Texas Cordia to proceed with the boring and crossing under Irrigation District 1's canal right-of-way. I was present for and personally observed both meetings.

14. On June 8, 2020, the McAllen City Commission met again and rescinded its June 1, 2020 approval of the Change Order.

15. On June 17, 2020, Irrigation District 1 and the City executed an *Easement in Gross Agreement*, dated June 15, 2020, which is recorded as Document No. 3121836 in the Official Records of Hidalgo County, Texas. A true, correct, and complete copy of the signed and recorded *Easement in Gross Agreement* (the "Gross Agreement") is attached as Exhibit D-3 to this affidavit

and is incorporated herein for all purposes. The Gross Agreement (i) grants the City an easement in Irrigation District 1's canal right-of-way for the "installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of the road, sidewalks, curb and gutter, commonly known as the Bicentennial Boulevard project" and (ii) prohibits the "installation of any pipeline or any underground facility on, in or under [Irrigation District 1]'s siphon" absent a court order or written agreement between Irrigation District 1 and the City. The plat attached to this affidavit as Exhibit D-4, and incorporated herein for all purposes, depicts (i) the easement property designated by Irrigation District 1 and the City for Bicentennial Boulevard and described in the Gross Agreement and (ii) the property previously represented by the City to be located within the public right-of-way of Bicentennial Boulevard and described in the Pipeline Easement, as well as the subsurface easement condemned by Water District 3. In addition to the prohibition of any pipeline or other underground facility, the practical effect of the Gross Agreement is to move the easternmost boundary of the Bicentennial Boulevard public right-of-way to exclude the property described in the Pipeline Easement and the condemned easement.

16. The City has informed Water District 3 that it declined to approve the Change Order at least in part because Irrigation District 1 has not issued a permit to cross its canal right-of-way and that it would not allow Texas Cordia to construct the boring and crossing under the canal right-of-way without Irrigation District 1's consent. On August 5, 2020, the City instructed Texas Cordia to terminate construction of the Pipeline Extension at a location south of Irrigation District 1's canal right-of-way and to cap the pipeline at that point.

17. The Pipeline Extension has been under construction since early January 2020. To date, Texas Cordia has installed at least 3,100 linear feet of the Pipeline in the public right-of-way of Bicentennial Boulevard. Photographs of that construction are attached to this affidavit as

Exhibits D-5 through D-8 and are incorporated herein for all purposes. The construction contract between the City and Texas Cordia was intentionally structured so that the Pipeline Extension would be installed first and before the construction of the Bicentennial Extension. That timing and order of the work was intended to minimize cost to both the City and Water District 3 by eliminating any additional cost of constructing the Pipeline under an already existing roadway and any additional cost to repair or replace portions of that roadway after installation of the Pipeline.

18. Despite having terminated installation of the Pipeline Extension, construction of the Bicentennial Extension is continuing. Importantly, Texas Cordia is currently installing curb and gutter and beginning substructure and paving immediately south and north of and across the Irrigation District 1 canal right-of-way. See photographs attached to this affidavit as Exhibits D-9 and D-10 and incorporated herein for all purposes.

19. If Water District 3's possession of the condemned easement and installation of the Pipeline Extension, including the boring and crossing under the Irrigation District 1 canal right-of-way, are delayed until after the final resolution of the appeal in the condemnation proceeding and after construction of the Bicentennial Extension has been completed or substantially completed, Water District 3's cost of the Pipeline Extension will be increased by at least an additional \$1,000,000. In all reasonable likelihood, after such a delay, it will not be possible to complete the construction of the Pipeline Extension without temporarily removing and then replacing portions of Bicentennial Boulevard and causing interruptions of traffic on that roadway. As a practical matter, the increased cost and difficulties in construction may prevent Water District 3 from completing the Pipeline Extension at all in which case the funds already spent on this project will have been wasted and the capped Pipeline will serve no purpose.

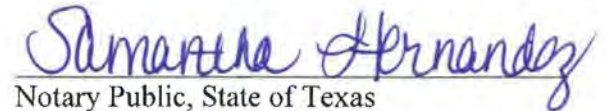
Further, Affiant sayeth not.


Frank A. Ferris, P.E.

SUBSCRIBED AND SWORN TO before me, the undersigned Notary, on this the 17 day of August, 2020.

[SEAL]




Notary Public, State of Texas
Name of Notary: Samantha Hernandez
My Commission expires: 03/26/2023

Hidalgo County
Arturo Guajardo Jr.
County Clerk
Edinburg, Texas 78540

Document No: 3044049

Billable Pages: 9

Recorded On: August 29, 2019 05:02 PM

Number of Pages: 10

*****Examined and Charged as Follows*****

Total Recording: \$ 68.00

*****THIS PAGE IS PART OF THE DOCUMENT*****

Any provision herein which restricts the Sale, Rental, or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.

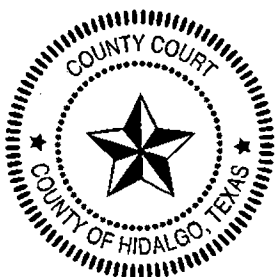
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Receipt No: 20190829000462
Recorded On: August 29, 2019 05:02 PM
Deputy Clerk: Imelda Leal
Station: CH-1-CC-K27

Record and Return To:

Simplifile
5072 North 300 West

PROVO UT 84604



STATE OF TEXAS
COUNTY OF HIDALGO

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time
printed hereon, and was duly RECORDED in the Official Records of Hidalgo County, Texas.

Arturo Guajardo Jr.
County Clerk
Hidalgo County, Texas

EXHIBIT D

Easement Agreement

Date: Effective as of August 8, 2019

Grantor: City of McAllen, Texas, a Texas home rule city

Grantor's Mailing Address:

City of McAllen
Attn: City Attorney's Office
McAllen City Hall
1300 Houston Avenue
McAllen, Texas 78501
(Hidalgo County)

Grantee: Hidalgo County Water Improvement District Number Three, a political subdivision of the State of Texas

Grantee's Mailing Address:

Hidalgo County Water Improvement District Number Three
1325 W. Pecan Boulevard
McAllen, Texas 78501
(Hidalgo County)

Grantor's Property: The property described as (i) a segment (the "South Segment") the width of the right-of-way of Bicentennial Boulevard from a point north of Trenton Road on the south to the north right-of-way line of the Hidalgo County Irrigation District No. 1 main canal, and (ii) a segment (the "North Segment") the width from the east right-of-way line of Bicentennial Boulevard to the top of the westernmost bank of Grantor's drainage ditch along and parallel to the west right-of-way line of Bicentennial Boulevard, said segment being from the north right-of-way line of the Hidalgo County Irrigation District No. 1 main canal on the south to the intersection of the Bicentennial Boulevard right of way with State Highway 107 on the north.

Easement Property: A strip of land ten feet (10') in width consisting of two segments, the first of which segments (the "South Easement Segment") is located in the South Segment of Grantor's Property and is five feet (5') on either side of a centerline described in Exhibit A attached hereto and incorporated herein, and the second of which segments (the "North Easement Segment") is ten feet (10') in width, is in the North Segment of Grantor's Property, begins at the northernmost point of said centerline described in Exhibit A and ends at the intersection of the

Bicentennial Boulevard right-of-way with State Highway 107, and is located between the tops of the east and west banks of Grantor's drainage ditch along and parallel to the west right-of-way line of Bicentennial Boulevard. Grantor and Grantee agree that (i) the Facilities in the North Easement Segment shall be installed and constructed along a route and in accordance with plans prepared by Grantee and reviewed and approved by Grantor's engineering department in accordance with Grantor's Right-of-Way Management Ordinance, (ii) once construction of Grantee's underground pipeline in the North Easement Segment has been completed, Grantee will cause a survey and metes and bounds description of the centerline of said pipeline to be prepared at Grantee's expense, (iii) thereafter, the North Easement Segment shall be the strip of land consisting of five feet (5') on either side of said surveyed and described centerline, and (iv) the parties shall record a modification of this Easement Agreement limiting the North Easement Segment to the five feet (5') on either side of the surveyed and described centerline and releasing the remainder of the North Segment of Grantor's Property from the easement granted herein. In addition to the foregoing property, the Easement Property shall also include as much of the remainder of Grantor's Property as may be reasonably necessary for ingress and egress by Grantee, its employees, agents, and contractors to and from the Easement Property, to construct, install, operate, maintain, inspect, repair, and replace the Facilities, but ONLY to the extent that the Easement Property is not accessible by using existing rights-of-way, streets, roads, driveways, and parking areas to the maximum extent reasonably possible.

Easement Purpose: For the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of an underground 48" pipeline transporting raw water, air release valves, and other equipment required for operation of pipeline (collectively, the "Facilities").

Consideration: Grantor grants the easement herein in consideration of Grantee's agreement (i) pursuant to Section 49.226(a), *Texas Water Code*, to declare a 2.538-acre tract of land as surplus property not needed by Grantee and (ii) to sell said 2.538-acre tract to Grantor for like fair market value as determined by Grantee's board of directors, all as set forth in said board's Resolution originally adopted on August 8, 2019 and subsequently amended by said board's Resolution adopted on August 21, 2019.

Reservations from Conveyance: Grantor, as owner of Grantor's Property, and for the benefit of previous and any subsequent grantees of Grantor, reserves the right to use all or part of the Easement Property in conjunction with Grantee, as long as such further uses and/or conveyances are subject to the terms of this agreement and do not prevent, interfere with, or adversely affect Grantee's use of the Easement Property for the Easement Purpose.

Exceptions to Warranty: Validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests, and water interests outstanding in persons other than Grantor, and other instruments that affect the Easement Property; and, until acquired, those sections of the Easement Property to which Grantor, as of the date hereof, has yet to acquire title through either consensual sales or eminent domain proceedings (the "Unacquired Properties").

Grant of Easement: Grantor, for the Consideration as described herein and subject to the

Reservations from Conveyance and Exceptions to Warranty, (i) consents pursuant to Section 552.103, *Texas Local Government Code*, to the use of the Easement Property for the Easement Purposes, and (ii) grants, sells, and conveys to Grantee and Grantee's heirs, successors, and assigns an easement over, on, and across the Easement Property for the Easement Purpose, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs, successors, and assigns to warrant and forever defend the title to the Easement in Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part thereof, except as to the Reservations from Conveyance and Exceptions to Warranty, to the extent that such claim arises by, through, or under Grantor but not otherwise; provided, however, that Grantor shall not have breached its special warranty of title with respect to the Unacquired Properties from the date hereof until Grantor acquires title to the Unacquired Properties; as and when Grantor acquires sections of the Unacquired Properties, the parties intend that this Easement attach to such sections, and the special warranty provided herein shall then apply to such sections of the Unacquired Property. This conveyance is intended to include any property interests obtained by after-acquired title.

With respect only to construction plans for Facilities submitted by Grantee to Grantor's engineering department as of the date of execution of this Easement Agreement for the construction of Facilities in the South Easement Segment, Grantor and Grantee agree: (i) that the execution of this Easement Agreement and the granting of the Easement herein satisfy the requirements for registration of Grantee and engineering department review and approval set out in Grantor's Right-of-Way Management Ordinance (Ord. No. 2002-03, § 1, 1-14-02, as amended; McAllen City Ordinances, Chapter 94, Article II); (ii) if applicable, this Easement is deemed by Grantor to satisfy any requirement under said Ordinance to apply for and obtain a permit to construct the Facilities; and (iii) that Grantor waives, and Grantee shall not be required to pay to Grantor, any annual or other fees which might otherwise be required by Grantor pursuant to said Right-of-Way Management Ordinance or otherwise.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement.* The Easement and related rights granted by Grantor in this agreement to Grantee are a nonexclusive and irrevocable easement in gross for the benefit of Grantee and its successors and assigns, as owner of the rights created by the Easement in gross (as applicable, the "Grantee"). In the event Grantor permits the installation of other underground utility lines, cables, pipelines, conduit, or other related facilities within the boundaries of the Easement Property after the review and approval by Grantor's engineering department of Grantee's Facilities, such facilities shall not be located directly above and parallel to Grantee's underground pipeline or in such other location which will prevent or hinder Grantee's construction and installation of or access to its pipeline and Grantee's ability to maintain, repair, replace, or remove its pipeline. Grantor shall require any such other utility facilities crossing above or running parallel to Grantee's Facilities reviewed and approved by Grantor's engineering department to have a minimum separation from Grantee's pipeline of twenty-four inches (24") measured from outside diameter to outside diameter. Grantor agrees to provide

Grantee with a copy of the plans of record for any underground utilities constructed in the Easement Property. The Easement and related rights granted by Grantor in this agreement are binding on Grantor, on the Grantor's heirs, legal representatives, successors, and assigns, and on all future owners of the Easement Property. This Easement and other rights granted by Grantor in this agreement are independent of any lands or estates of interest in lands; there is no other real property benefitting from the Easement granted in this agreement.

2. *Assignment.* Grantee may not assign, sublease, license, transfer, or convey its interest in this agreement or any part of its interest in the Easement without Grantor's prior, written consent, which shall not be unreasonably withheld.

3. *Duration of Easement.* The duration of the Easement is perpetual.

4. *Improvement and Maintenance of Easement Property.* Improvement and maintenance of the Easement Property will be at the sole expense of Grantor. Improvement and maintenance of the Facilities will be at the sole expense of Grantee. Grantee has the right to construct, install, maintain, replace, and remove the Facilities under the Easement Property. Grantee shall provide Grantor with prior, written notice of maintenance of the Easement Property that would interfere with Grantor's use of the Easement Property. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Grantee's sole discretion, subject to performance of Grantee's obligations under this agreement. Grantee has the right to remove or relocate any improvements, including sidewalks and surface sprinkling/grass irrigation systems, within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities, and Grantee shall be responsible to maintain, restore or replace such improvements on the completion of Grantee's work as Grantor may determine in its best interest. In addition to the above, Grantee agrees, with respect to future work in connection with the Facilities, to comply with Grantor's Right-Of-Way Management Ordinance, other than the payment of annual or other fees which are waived by Grantor; provided, however, if there is a conflict between the terms and conditions of this Easement Agreement and the requirements or provisions of said ordinance, the terms and conditions of this Easement Agreement shall prevail. Notwithstanding the foregoing, unless caused by Grantee or resulting from a violation by Grantee of this Easement Agreement, any restoration, replacement, temporary removal or relocation of the Facilities resulting from actions by or requests from Grantor shall be the responsibility of Grantor and shall be at Grantor's expense.

5. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

6. *Attorney's Fees.* If either party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other

costs.

7. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.

8. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.

9. *Counterparts.* This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

10. *Waiver of Default.* It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

11. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

12. *Survival.* The obligations of the parties in this agreement that cannot be or were not performed before termination of this agreement survive termination of this agreement.

13. *Entire Agreement.* This agreement and any exhibits are the entire agreement of the parties concerning the Easement Property, and the grant of the Easement by Grantor to Grantee. There are no representations, agreements, warranties, or promises, and neither party is relying on any statements or representations of any agent of the other party, that are not in this agreement and any exhibits.

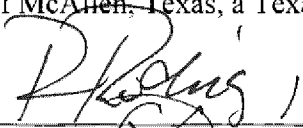
14. *Legal Construction.* If any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

15. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when

actually received. Any address for notice may be changed by written notice delivered as provided herein.

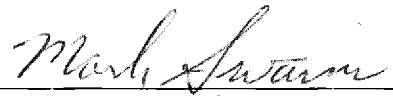
GRANTOR:

City of ~~McAllen~~, Texas, a Texas, a home rule city



 Roel Rodriguez, P.A., M.P.A., City Manager

Approved as to Form:

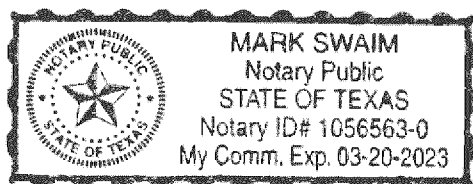


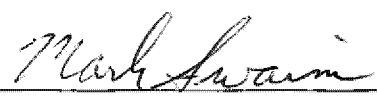
 Mark Swaim, Assistant City Attorney

STATE OF TEXAS)

COUNTY OF HIDALGO)

This instrument was acknowledged before me on the 29 day of August, 2019, by Roel Rodriguez, P.A., M.P.A., City Manager of the City of McAllen, Texas, a Texas, a home rule city, on behalf of said home rule City.





 Notary Public, State of Texas

Accepted by GRANTEE:

Hidalgo County Water Improvement District
 Number Three, a Texas political subdivision

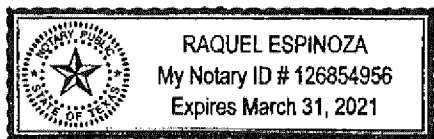


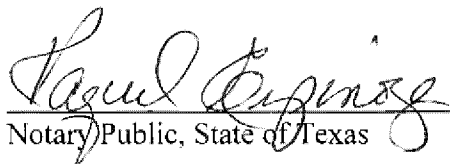
 Othal E. Brand, Jr., President

STATE OF TEXAS)

COUNTY OF HIDALGO)

This instrument was acknowledged before me on the 28th day of August, 2019, by Othal E. Brand, Jr., President of Hidalgo County Water Improvement District Number Three, a Texas political subdivision, on behalf of said District.




Notary Public, State of Texas

AFTER RECORDING RETURN TO:

R. K. Whittington
Law Offices of Randolph Kimble Whittington
2014 East Harrison Avenue
Harlingen, Texas 78550

20 August 2019

**METES AND BOUNDS
CENTERLINE OF 48-INCH IRRIGATION LINE TO
HIDALGO COUNTY WATER IMPROVEMENT DISTRICT NO. 3**

Description of the centerline of the 48-inch irrigation pipe for the use of Hidalgo County Water Improvement District No. 3 to be within the following described centerline and within the proposed Right of Way of Bicentennial Boulevard; said centerline being more particularly described by metes and bounds as follows:

COMMENCING at the Southwest corner of Villa Norte No. 3 Subdivision, recorded in Volume 37, Page 163, Map Records of Hidalgo County, Texas; (Having Coordinate values of X = 1073770.0874 Y = 16625992.7727 of the Texas State Plane Coordinate System, South Zone, NAD 83)

THENCE South 19 Deg. 15 Min. 40 Sec. West a distance of **32.26 Feet** to the **POINT OF BEGINNING** of the centerline herein described; (Having coordinate values of X = 1073759.4445 Y = 16625962.3150 based on the Texas State Plane Coordinate System, South Zone, NAD83);

- 1) **THENCE North 08 Deg. 38 Min. 41 Sec. East** a distance of **248.00 Feet** to a point for a corner of the tract herein described;
- 2) **THENCE North 21 Deg. 52 Min. 45 Sec. East** a distance of **92.46 Feet** to the point of curvature of a curve to the Left, for an angle point of the tract herein described;
- 3) **THENCE** along said curve to the left with a radial bearing of North 70 Deg. 06 Min. 19 Sec. West, a radius of 984.36 Feet; having an Arc Length of 193.04 Feet; through a delta angle of 11 Deg. 14 Min. 11 Sec.; with a chord bearing of North 14 Deg. 16 Min. 36 Sec. East and a chord distance of 192.73 Feet to the point of tangency of said curve and an angle point of the tract herein described;
- 4) **THENCE North 08 Deg. 39 Min. 31 Sec. East** a distance of **1242.70 Feet** to the point for a corner of the tract herein described;
- 5) **THENCE** along said curve to the Right with a radial bearing of South 81 Deg. 20 Min. 29 Sec. East, a radius of 906.00; having an Arc Length of 747.90 Feet; through a delta angle of 47 Deg. 17 Min. 52 Sec.; with a chord bearing of North 32 Deg. 18 Min. 26 Sec. East and a chord distance of 726.85 Feet to the point of a reverse curve and an angle point of the tract herein described;
- 6) **THENCE** along said curve to the Left with a radial bearing of North 34 Deg. 02 Min. 38 Sec. West, a radius of 974.00; having an Arc Length of 298.85 Feet; through a delta angle of 17 Deg. 34 Min. 49 Sec.; with a chord bearing of North 47 Deg. 09 Min. 58 Sec. East and a chord distance of 297.68 Feet to the point of tangency of said curve and an angle point of the tract herein described;
- 7) **THENCE North 38 Deg. 22 Min. 34 Sec. East** a distance of **184.22 Feet** to the point of curvature of a curve to the left, for an angle point of the tract herein described;
- 8) **THENCE** along said curve to the Left with a radial bearing of North 51 Deg. 37 Min. 26 Sec. West, a radius of 583.99; having an Arc Length of 303.92 Feet; through a delta angle of 29 Deg. 49 Min. 04 Sec.; with a chord bearing of North 23 Deg. 28 Min. 02 Sec. East and a chord distance of 300.50 Feet to the point of tangency and an angle point of the tract herein described;
- 9) **THENCE North 08 Deg. 33 Min. 30 Sec. East** a distance of **869.59 Feet** to a point for a corner of the tract herein described;
- 10) **THENCE North 02 Deg. 41 Min. 30 Sec. West** a distance of **51.11 Feet** to a point for a corner of the tract herein described;

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20 August 2019
Irrigation Pipe Centerline

- 11) **THENCE North 08 Deg. 33 Min. 30 Sec. East** a distance of **179.93 Feet** to a point for a corner of the tract herein described;
- 12) **THENCE North 2 Deg. 41 Min. 30 Sec. West** a distance of **102.52 Feet** to a the point of curvature of a curve to the Right, for an angle point of the tract herein described;
- 13) **THENCE** along a curve to the Right, having a radial bearing of South 81 Deg. 26 Min. 30 Sec. East, with a radius of 1496.00, having an Arc Length of 498.59 Feet; through a delta angle of 19 Deg. 05 Min. 44 Sec.; with a chord bearing of North 18 Deg. 06 Min. 22 Sec. East and a chord distance of 496.28 Feet to the point of tangency of said curve, for an angle point of the tract herein described;
- 14) **THENCE North 27 Deg. 39 Min. 15 Sec. East** a distance of **429.99 Feet** to the point of curvature of a curve to the left, for an angle point of the tract herein described;
- 15) **THENCE** along said curve to the Left, having a radial bearing of North 62 Deg. 20 Min. 45 Sec. West, with a radius of 5000.00 Feet, an Arc Length of 184.93 Feet, through a delta angle of 02 Deg. 07 Min. 09 Sec., with a chord bearing North 26 Deg. 35 Min. 40 Sec. East and a chord distance of 184.92 Feet to the point of tangency of said curve and an angle point of the tract herein described;
- 16) **THENCE North 25 Deg. 32 Min. 06 Sec. East** a distance of **120.34 Feet** to a point for a corner of the tract herein described;
- 17) **THENCE North 14 Deg. 17 Min. 06 Sec. East** a distance of **66.00 Feet** to a point for a corner of the tract herein described;
- 18) **THENCE North 25 Deg. 32 Min. 06 Sec. East** a distance of **283.93 Feet** to a point for a corner of the tract herein described;
- 19) **THENCE** along a curve to the left, having a radial bearing of North 64 Deg. 27 Min. 54 Sec. West, with a radius of 900.00 Feet, an Arc Length of 248.76 Feet, through a delta angle of 15 Deg. 50 Min. 13 Sec., with a chord bearing North 17 Deg. 36 Min. 59 Sec. East and a chord distance of 247.97 Feet to a point of tangency of said curve and an angle point of the tract herein described;
- 20) **THENCE North 09 Deg. 41 Min. 53 Sec. East** a distance of **104.27 Feet** to a point for a corner of the tract herein described;
- 21) **THENCE North 80 Deg. 18 Min. 07 Sec. West** a distance of **80.00 Feet** to the **POINT OF ENDING** of the centerline herein described and bears North 20 Deg. 46 Min. 14 Sec. East a distance of 602.44 feet from the Northeast corner of Lot 60, La Floresta Subdivision Phase I recorded in Volume 55, Page 170 of the Map Records, Hidalgo County, Texas. (Having Coordinate values of X = 1075696.4609 Y = 16631935.9619 of the Texas State Plane Coordinate System, South Zone, NAD 83)

Basis of bearings on this metes and bounds are as per Texas Sate Plane Coordinate System, South Zone, NAD 83. All dimensions are in feet and decimals thereof.

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN
HIDALGO COUNTY WATER IMPROVEMENT DISTRICT NUMBER THREE
AND
CITY OF McALLEN**

This Agreement is made by and between CITY OF McALLEN, (“City”) and HIDALGO COUNTY WATER IMPROVEMENT DISTRICT NUMBER THREE, (“District”), pursuant to the provisions of the Texas Interlocal Cooperation Act, as follows:

WITNESSETH:

WHEREAS, City is currently in the process of extending Bicentennial Boulevard north from Trenton Road to State Highway 107; and

WHEREAS, District desires to extend its underground irrigation pipeline in and along the right-of-way for the Bicentennial Boulevard extension (the “Pipeline Project”); and

WHEREAS, City has agreed to grant an easement to District for such pipeline extension pursuant to an *Easement Agreement* of even date herewith; and

WHEREAS, City and District, through their respective engineers, have cooperated in the preparation of plans and specifications for the construction of City’s extension of Bicentennial Boulevard from Trenton Road to State Highway 107 and District’s pipeline extension from its existing pipeline north of Trenton Road to a point in the vicinity of the Hidalgo County Irrigation District No. 1 Main Canal; and

WHEREAS, said cooperatively prepared construction plans have been submitted to and approved by the Texas Department of Transportation (“TxDOT”); and

WHEREAS, City has submitted construction plans for bid for City’s extension of Bicentennial Boulevard in accordance with Texas Local Government Code Section 252 for the Bicentennial extension; and

WHEREAS, District has determined that it would be more cost effective to request bids for its pipeline extension as a separately bid cost item but in conjunction with the City’s bid request for the Bicentennial Boulevard extension, and City and District have determined that it would be more efficient for both extension projects to be constructed and coordinated by or under a single contract and general contractor; and

WHEREAS, City and District are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, *Texas Government Code* Sec. 791.001 et seq., which authorizes local governments to contract with each other to perform governmental functions and services under the terms of the Act.

NOW THEREFORE, City and District, in consideration of the mutual covenants expressed hereinafter, agree as follows:

1. The parties acknowledge and agree that (i) District has provided construction plans to the City engineering department for the irrigation pipeline extension to a point just north of the Hidalgo County Irrigation District No. 1 Main Canal and near the west right-of-way line of Bicentennial Boulevard, (ii) the design, size and location of the pipeline in the Bicentennial Boulevard right-of-way, as reflected in such construction plans, have been reviewed and approved pursuant to the City's Right-of-Way Management Ordinance, and (iii) the governing body of City has consented, pursuant to Section 552.103, *Texas Local Government Code*, to the construction and maintenance of the pipeline extension in the Bicentennial Boulevard right-of-way.
2. City has included in its base bid package the scope of work and materials (other than 48-inch PVC pipe) indicated in the construction plans for the District's pipeline extension. As an alternate, City can deduct this amount from the Contract.
3. City acknowledges that District's pipeline extension will not involve a breaking of pavement or closing of a traffic lane for more than four hours and does not require a construction permit under City's Right-of-Way Management Ordinance. To the extent that any other permit may be required for the proposed pipeline extension from any government agency other than City, District shall be responsible for obtaining any such permits and shall provide evidence of having obtained same to City prior to the award of the contract for the irrigation pipeline installation.
4. Within twenty (20) days of the City opening the bids for the Bicentennial Boulevard and pipeline extensions, District shall obtain and cause Texas Regional Bank (the "Issuer") to issue an irrevocable letter of credit (the "Letter of Credit") for the benefit of City committing Issuer, upon presentation of the documents described below (collectively, the "Documents"), to honor periodic requests for payments in a cumulative amount sufficient to pay the cost of the pipeline extension as reflected in the bid to be accepted by City. If District fails to timely cause the issuance of the Letter of Credit by Issuer, City may exercise the alternate by removing the amount for the pipeline extension from the accepted bid contract, and this Agreement may be terminated by written notice to District.
5. The Letter of Credit shall condition Issuer's obligation to make the initial payment to City on the presentation by City to Issuer of a certified true and correct copy of the contract (the "Contract") for the construction of the extensions of Bicentennial Boulevard and the District's pipeline executed by City and the general contractor ("General Contractor") responsible for the construction of said extensions; and Issuer's obligation to make the initial and each succeeding payment to City shall be further conditioned on the

presentation by City to Issuer of (i) a true and correct copy of the applicable progress payment request for work performed and/or materials furnished with respect to the construction of the District's pipeline extension, (ii) the original of a certificate ("City's Certificate") executed by an authorized representative of City certifying that the work and/or materials described in the progress payment request have been performed and/or furnished in accordance with the Contract and the approved construction plans and specifications, and (iii) the original of a certificate (the "District's Certificate") executed by an authorized representative of District and District's engineer certifying that the work and/or materials described in the progress payment request have been performed and/or furnished, have been inspected by the District and its engineer, and have been performed and/or furnished in accordance with the Contract and the approved construction plans and specifications. In the event the Pipeline Project is not completed by Contractor and inspected and accepted by the City and District at least sixty (60) days before the Letter of Credit expires, District shall deliver to City a document executed by Issuer that extends the Letter of Credit for one (1) year commencing on the original expiry date of the Letter of Credit. The Letter of Credit, City's Certificate and District's Certificate shall each be in a form mutually satisfactory to City, District and Texas Regional Bank.

6. City shall promptly provide District with each progress payment request for work performed and materials furnished with respect to the District pipeline extension, together with a true and correct copy of an executed City Certificate. District shall have timely inspected the work and materials, and, upon approval, shall promptly deliver to City the original of an executed District's Certificate. City and District each agree that time is of the essence with respect to the processing and payment of progress payment requests and agree to perform the foregoing deliveries, inspections, and execution of City and District Certificates in a timely manner so that City may present the Documents to the Issuer of the Letter of Credit and make payments to Contractor in accordance with the Contract. City shall provide District and its engineer access to the worksite at all times for purposes of inspection of work performed and materials furnished in connection with the District's pipeline extension.
7. District shall furnish and pay for all materials for the pipeline extension not included in the bid accepted by City and the contract executed between City and the general contractor.
8. In addition to the requirements specifically mentioned herein, District shall provide evidence that all items, including but not limited to, funds and/or permits from government agencies other than City have been obtained so that the District's pipeline extension can be completed in its entirety as specified in the project without delays, "gaps," or other hindrances to the City's roadway project.
9. District shall pay for any and all Change Orders requested by District and

associated with the District's pipeline extension with such payment due, subject to District's inspection and approval of the work and/or materials included in the Change Order, at the time required by the contract between the City and general contractor. All communications with the Contractor regarding Change Orders or the Contract shall be made through the City.

10. City shall pay the construction in accordance with the contract.
11. This Agreement is effective on the date on which the last party to this Agreement executed the Agreement.
12. **Conflict with Applicable Law.** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the times such conflicts exist.
13. **No Waiver.** No waiver by any party hereto of any breach of any provision of the Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.
14. **Entire Agreement.** This Agreement contains the entire contract between the parties hereto with respect to the specific subject matter of this Agreement, and each party acknowledges that neither has made (either directly or through any agent or representative) any representation or agreement in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by City and District, and not otherwise.
15. **Texas Law to Apply.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.
16. **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communication required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice and delivered in accordance herewith.

If to City:

City of McAllen
Attention: City Manager

P. O. Box 220
McAllen, Texas 78505-0220

With a copy to: City of McAllen
Attention: City Attorney
P. O. Box 220
McAllen, Texas 78505-0220

If to District: Hidalgo County Water Improvement District
Number Three
Attention: General Manager
1325 Pecan Blvd.
McAllen, Texas 78502

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States Mail.

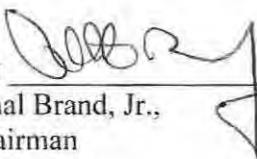
17. **Additional Documents.** The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.
18. **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.
19. **Assignment.** This Agreement shall not be assignable.
20. **Headings.** The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.
21. **Gender and Number.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and singular shall include the plural whenever and so often as may be appropriate.
22. **Authority to Execute.** The execution and performance of this Agreement by City and District have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of same in accordance with its terms.
23. **Governmental Purpose.** Each party hereto is entering into this Agreement

for the purpose of providing for governmental services or functions and will pay for such services out of current revenues available to the paying party as herein provided. The parties hereto further acknowledge that this Agreement states all of the essential terms of the agreement between the parties with respect to the subject matter hereof, provides for each of the parties to provide services to or for the benefit of the other party, is properly approved and executed on behalf of each of the parties, and is a contract entered into by the parties subject to the provisions of Chapter 271, Subchapter I, *Texas Local Government Code*.

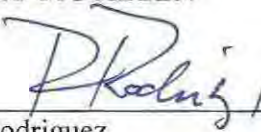
24. **Commitment of Current Revenues Only.** In the event that, during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then any party may terminate this Agreement upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to obtain and appropriate funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each party hereto pursuant to the provisions of Section 271.903, *Texas Local Government Code*.
25. **Mediation.** Both the parties desire to resolve disputes without litigation. Any dispute between the City and District related to or arising out of this Agreement which is not resolved through informal discussion will first be submitted to a mutually acceptable mediator or mediation service for non-binding mediation prior to litigation. The parties to the mediation shall bear the mediation costs equally.

WITNESS THE HANDS OF THE PARTIES effective on the date on which the last party to this Agreement executed the Agreement.


Hidalgo County Water Improvement District
Number Three

By:  8-28-19
Othal Brand, Jr., Date
Chairman

CITY OF MC ALLEN

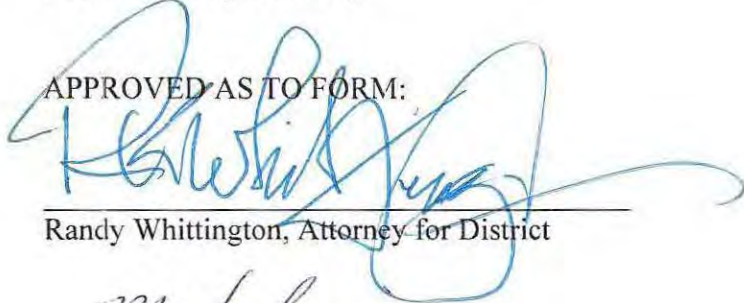
By:  8/29/19
Roel Rodriguez, Date
City Manager

ATTEST:

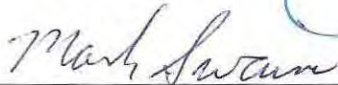


Perla Lara, City Secretary

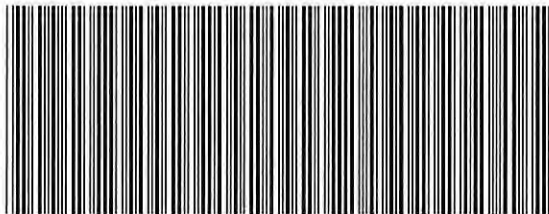
APPROVED AS TO FORM:



Randy Whittington, Attorney for District



Mark Swaim, Assistant City Attorney



VG-120-2020-3121836

Hidalgo County
Arturo Guajardo Jr.
County Clerk
Edinburg, Texas 78540

Document No: 3121836

Billable Pages: 9

Recorded On: June 17, 2020 03:37 PM

Number of Pages: 10

*****Examined and Charged as Follows*****

Total Recording: \$ 68.00

*****THIS PAGE IS PART OF THE DOCUMENT*****

Any provision herein which restricts the Sale, Rental, or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.

File Information:

Document No: 3121836
Receipt No: 20200617000300
Recorded On: June 17, 2020 03:37 PM
Deputy Clerk: Elaine Acuna
Station: Mcallen-CC-K24

Record and Return To:

City of McAllen / Sylvia Hernandez
1300 W Houston
original returned to customer
MCALLEN TX 78501



STATE OF TEXAS
COUNTY OF HIDALGO

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time
printed hereon, and was duly RECORDED in the Official Records of Hidalgo County, Texas.

Arturo Guajardo Jr.
County Clerk
Hidalgo County, Texas

EXHIBIT D

Easement in Gross Agreement

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

Date: June 15, 2020

Grantor: Hidalgo County Irrigation District No. One

Grantor's Mailing Address:

P.O. Box 870
Edinburg, Hidalgo County, Texas 78540

Grantee: The City of McAllen

Grantee's Mailing Address:

P.O. Box 220
McAllen, Hidalgo County, Texas 78501

Easement Property: All of the property as described in Exhibit A and Exhibit B, attached hereto and incorporated herein, and as much of the remainder of Grantor's Property as may be reasonably necessary for ingress and egress by Grantee, its employees, agents, and contractors to and from the Easement Property, to construct, install, operate, maintain, inspect, repair, and replace the Facilities, ONLY to the extent that the Easement Property is not accessible by using existing rights-of-way, streets, roads, driveways, and parking areas to the maximum extent reasonably possible.

Easement Purpose: For the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of the road, sidewalks, curb and gutter, commonly known as the Bicentennial Boulevard project (collectively, the "Facilities"). Absent a court order or written agreement between the Parties, installation of any pipeline or any underground facility on, in or under the Grantor's siphon is specifically excluded. In the event Grantee installs or allows the installation of any pipeline or underground infrastructure on, in or under Grantor's siphon, the Easement granted here is immediately extinguished and thereafter null and void ab initio.

Consideration: Good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor.

Reservations from Conveyance: None.

Exceptions to Warranty: Notwithstanding anything herein to the contrary, the Holder acknowledges that Grantor is making no warranties or covenants regarding title to the Property and that all covenants and/or warranties that might arise by contract, statute or common law (including but not limited to the covenant of seisin) as well as the warranties in section 5.023 of the Texas Property Code (or its successors) are excluded.

Grant of Easement: Grantor, for the Consideration and subject to the Reservations from Conveyance and Exceptions to Warranty, grants, sells, and conveys to Grantee and Grantee's heirs, successors, and assigns an easement over, on, and across the Easement Property for the Easement Purpose, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement to Grantee and Grantee's heirs, successors, and assigns forever.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement.* The Easement and related rights granted by Grantor in this agreement to Grantee are an exclusive easement in gross for the benefit of Grantee and its successors and assigns, as owner of the rights created by the Easement in gross, and is exclusive (as applicable, the "Holder"). The Easement and related rights granted by Grantor in this agreement are binding on Grantor; on the Grantor's heirs, legal representatives, successors, and assigns; and on all future owners of the Easement Property. This Easement and other rights granted by Grantor in this agreement are independent of any lands or estates of interest in lands; there is no other real property benefitting from the Easement granted in this agreement.

2. *Assignment.* Grantee may assign, sublease, license, transfer, or convey its interest in this agreement or any part of its interest in the Easement without Grantor's consent, provided that the assignee or transferee shall be subject to all of the obligations, covenants, and conditions applicable to Grantee.

3. *Duration of Easement.* The duration of the Easement is perpetual.

4. *Improvement and Maintenance of Easement Property.* Improvement and maintenance of the Easement Property and the Facilities will be at the sole expense of Holder. Holder has the right to eliminate any encroachments into the Easement Property that interfere with the Easement Purpose. Holder must maintain the Easement Property in a neat and clean condition. Holder has the right to construct, install, maintain, replace, and remove the Facilities on or across any portion of the Easement Property. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Holder's sole discretion, subject to performance of Holder's obligations under this agreement. Holder has the right to remove or relocate any fences within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities, subject to replacement of the fences to their original condition on the completion of the work. Holder agrees that any damage to Grantor's siphon caused by the installation or maintenance of the road by or at the direction of Holder will be repaired at the expense of the Holder.

5. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

6. *Attorney's Fees.* If either party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

7. *Binding Effect.* This agreement binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

8. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.

9. *Counterparts.* This agreement may be executed in multiple counterparts. All counterparts taken together constitute this agreement.

10. *Waiver of Default.* A default is not waived if the nondefaulting party fails to declare default immediately or delays in taking any action with respect to the default. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

11. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

12. *Indemnity.* To the extent allowed by law, each party agrees to indemnify, defend, and hold harmless the other party from any loss, attorney's fees, expenses, or claims attributable to breach or default of any provision of this agreement by the indemnifying party. The obligations of the parties under this provision will survive termination of this agreement.

13. *Survival.* The obligations of the parties in this agreement that cannot be or were not performed before termination of this agreement survive termination of this agreement.

14. *Entire Agreement.* This agreement and any exhibits are the entire agreement of the parties concerning the Easement Property and the grant of the Easement by Grantor to Grantee. There are no representations, agreements, warranties, or promises, and neither party is relying on any statements or representations of the other party or any agent of the other party, that are not expressly set forth in this agreement and any exhibits.

15. *Legal Construction.* If any provision in this agreement is unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

16. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

**HIDALGO COUNTY IRRIGATION
DISTRICT NO. ONE**

By: Robert L. Bell, Jr.
Robert L. Bell, Jr., President

THE CITY OF MCALLEN

By: Roy Rodriguez
Roy Rodriguez, City Manager

ACKNOWLEDGMENTS

THE STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

This instrument was acknowledged before me on June 17, 2020,
by Robert L. Bell, Jr., as President of Hidalgo County Irrigation District No. One.



Estella Mata
NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

This instrument was acknowledged before me on June 17, 2020,
by Roy Rodriguez, as City Manager for the City of McAllen.



Sylvia Hernandez
NOTARY PUBLIC, STATE OF TEXAS

Revised June 15, 2020
METES AND BOUNDS DESCRIPTION
0.40 ACRES OF LAND OUT OF
LOT 9 SECTION 279 TEXAS-MEXICAN
RAILWAY COMPANY SURVEY
HIDALGO COUNTY, TEXAS



Job No. 200606
0.40 acres of land
Sheet No.: 1 of 2

A tract of land containing 0.40 acres of land, more or less, situated in Hidalgo County, Texas, being part or portion of **LOT 9 SECTION 279, and LOT 12 SECTION 278, TEXAS-MEXICAN RAILWAY COMPANY SURVEY**, Hidalgo County, Texas, map reference: Volume 24 Page 168 Deed Records, Hidalgo County, Texas, and said 0.40 acres also being more particularly described as follows;

COMMENCING for reference at the southeast corner of Lot 1, Southwest Elementary School Subdivision map reference: Volume 33 Page 62 Map Records, Hidalgo County, Texas, **THENCE** S 56° 29' 21" E, along the north right-of-way line of said Hidalgo County Irrigation District No. 1 Main Canal, a distance of 65.25 feet to a ½" iron rod with a plastic cap stamped "CVQ LS" set, on a curve to the right and the proposed west right-of-way line of Bicentennial Boulevard, for the **POINT OF BEGINNING**, and the Northwest corner of this tract;

THENCE S 56° 29' 21" E, continuing along the north right-of-way line of said Hidalgo County Irrigation District No. 1 Main Canal, and the south line of said Southwest Elementary School Subdivision, at a distance of 50.12 feet pass the southeast corner of said Southwest Elementary School Subdivision, the southwest corner of a tract of land deeded to The City of McAllen recorded in Document Number 1838944 Deed Records, Hidalgo County, Texas, continuing a total distance of 87.45 feet to a ½" iron rod with a plastic cap stamped "CVQ LS" set on a curve to the right and the proposed east right-of-way line of said Bicentennial Boulevard, for the Northeast corner hereof;

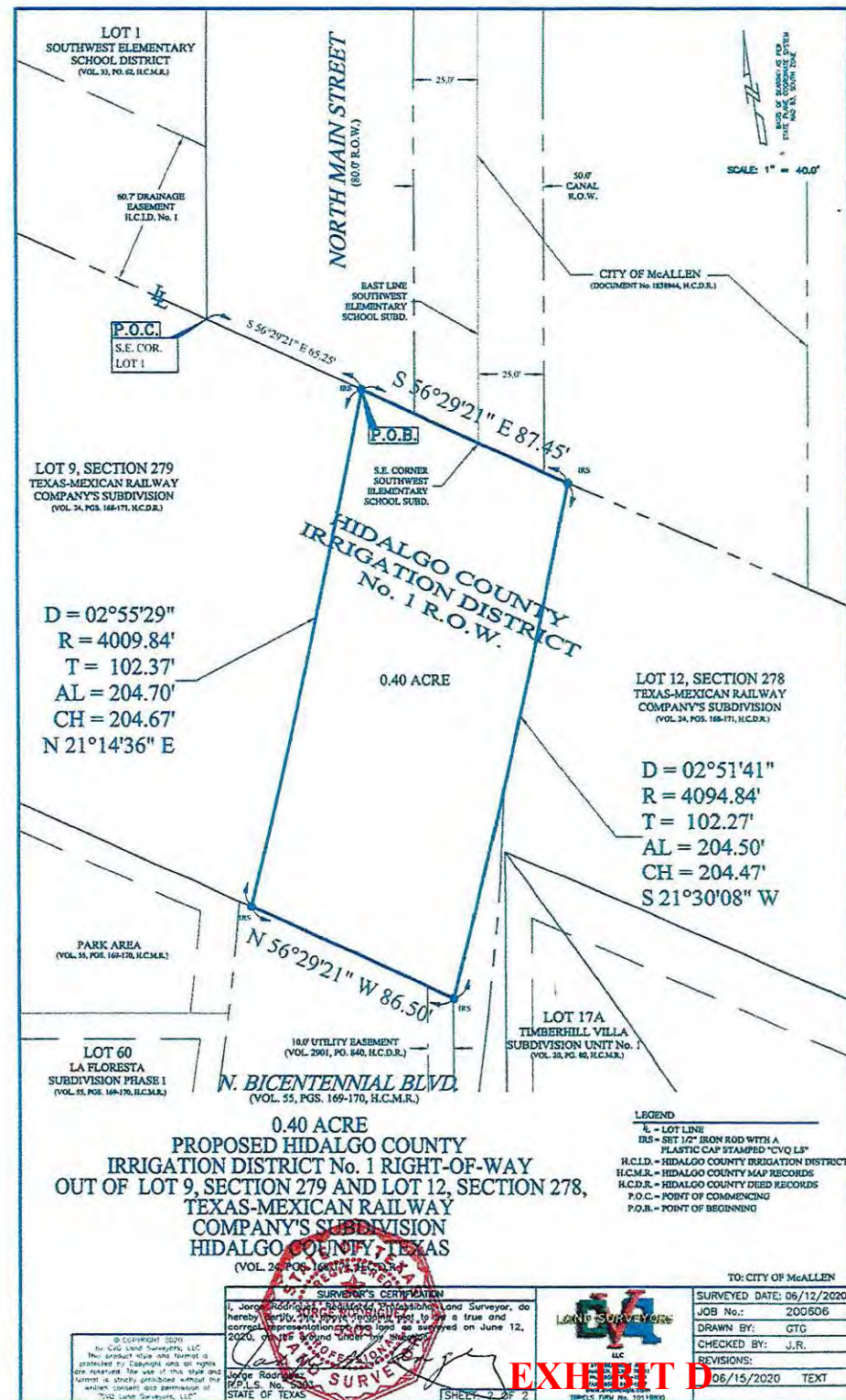
THENCE in a southwesterly direction along said curve to the right and the proposed east right-of-way line of said Bicentennial Boulevard a distance of 204.50 feet, said curve having a radius of 4094.84 feet, a delta angle of 02° 51' 41", a tangent of 102.27, and a chord that bears S 21° 30' 08" W 204.47 feet, to a ½" iron rod with a plastic cap stamped "CVQ LS" on the south right-of-way line of said Hidalgo County Irrigation District No. 1 Main Canal, for the Southeast corner hereof;

THENCE N 56° 29' 21" W, along the south right-of-way line of said Hidalgo County Irrigation District No. 1 Main Canal, a distance of 86.50 feet, to a ½" iron rod with a plastic cap stamped "CVQ LS" set on a curve to the left and the proposed west right-of-way line of said Bicentennial Boulevard, for the Southwest corner hereof;

THENCE in a northeasterly direction along said curve to the left and the proposed west right-of-way line of said Bicentennial Boulevard a distance of 204.70 feet, said curve having a radius of 4009.84 feet, a delta angle of 02° 55' 29", a tangent of 102.37, and a chord that bears N 21° 14' 36" E 204.67 feet, to the **POINT OF BEGINNING**, containing 0.40 acres of land, more or less.

Bearing basis as per **TEXAS STATE PLANE COORDINATES SYSTEM NAD 1983, South Zone.**
THE ABOVE DESCRIPTION WAS SURVEYED ON THE GROUND UNDER MY DIRECTION
ON JUNE 12, 2020.


Jorge Rodriguez, R.P.L.S. No. 5303
CVQ Land Surveyors, LLC
T.B.P.E.L.S. Firm No. 10119600



Revised August 26, 2019
METES AND BOUNDS DESCRIPTION
0.57 ACRES OF LAND OUT OF
SOUTHWEST ELEMENTARY SCHOOL
SUBDIVISION,
HIDALGO COUNTY, TEXAS



Job No. 190524
0.57 acres of land
Sheet No.: 1 of 2

A tract of land containing 0.57 acres of land, more or less, situated in Hidalgo County, Texas, being part or portion of **SOUTHWEST ELEMENTARY SCHOOL SUBDIVISION**, Hidalgo County, Texas, map reference: Volume 33, Page 62, Map Records, Hidalgo County, Texas, and said 0.57 acres also being more particularly described as follows;

COMMENCING for reference at the southeast corner of Lot 1, of said Southwest Elementary School Subdivision, and the northerly right-of-way line of Hidalgo County Irrigation District No. 1, Main Canal (with varies), **THENCE** S 56° 28' 52" E along the south line of said Southwest Elementary School Subdivision, and the northerly right-of-way of said Hidalgo County Irrigation District No. 1, a distance of 87.92 feet, to a 1/2" iron rod with plastic cap stamped "CVQ LS" set on the west right-of-way of a 25 foot Hidalgo County Irrigation District No. 1 canal, as shown on said Southwest Elementary School Subdivision, and the easterly right-of-way line of North Main Street (80.0 foot right-of-way), as shown on said Southwest Elementary School Subdivision, for the **POINT OF BEGINNING**, and the Southwest corner of this tract;

THENCE N 09° 00' 44" E, along the west right-of-way line of said 25 foot canal and the east line of said North Main Street, a distance of 1004.04 feet, to a 1/2" iron rod with plastic cap stamped "CVQ LS", set on a corner clip of Bicentennial Boulevard right-of-way, recorded in Document Number 1838944, Deed Records, Hidalgo County, Texas, for the Northwest corner hereof;

THENCE S 36° 01' 37" E, continuing along the westerly right-of-way line of said Bicentennial Boulevard, a distance of 35.33 feet, to a corner clip and the west right-of-way line of said Bicentennial Boulevard, for the Northeast corner hereof;

THENCE S 09° 00' 44" W, continuing along the west right-of-way line of said Bicentennial Boulevard, a distance of 990.41 feet, to a 1/2" iron rod with plastic cap stamped "CVQ LS" set on the southeast corner of said Southwest Elementary School Subdivision, for the Southeast corner hereof;

THENCE N 56° 35' 22" W, continuing along the south line of said Southwest Elementary School Subdivision, and the northerly right-of-way line of said Hidalgo County Irrigation District No. 1 canal, a distance of 27.45 feet, to the **POINT OF BEGINNING**, containing 0.57 acres of land, more or less.

Bearing basis as per **TEXAS STATE PLANE COORDINATES SYSTEM NAD 1983, South Zone.**
THE ABOVE DESCRIPTION WAS SURVEYED ON THE GROUND UNDER MY
DIRECTION ON JULY 15, 2019.


Jorge Rodriguez, R.P.L.S. No. 5303
CVQ Land Surveyors, LLC
T.B.P.L.S. Firm No. 10119600



P.O. Box 5066 • McALLEN, TEXAS 78502 • PHONE (956) 618-1551 • FAX (956) 618-1547

EXHIBIT D

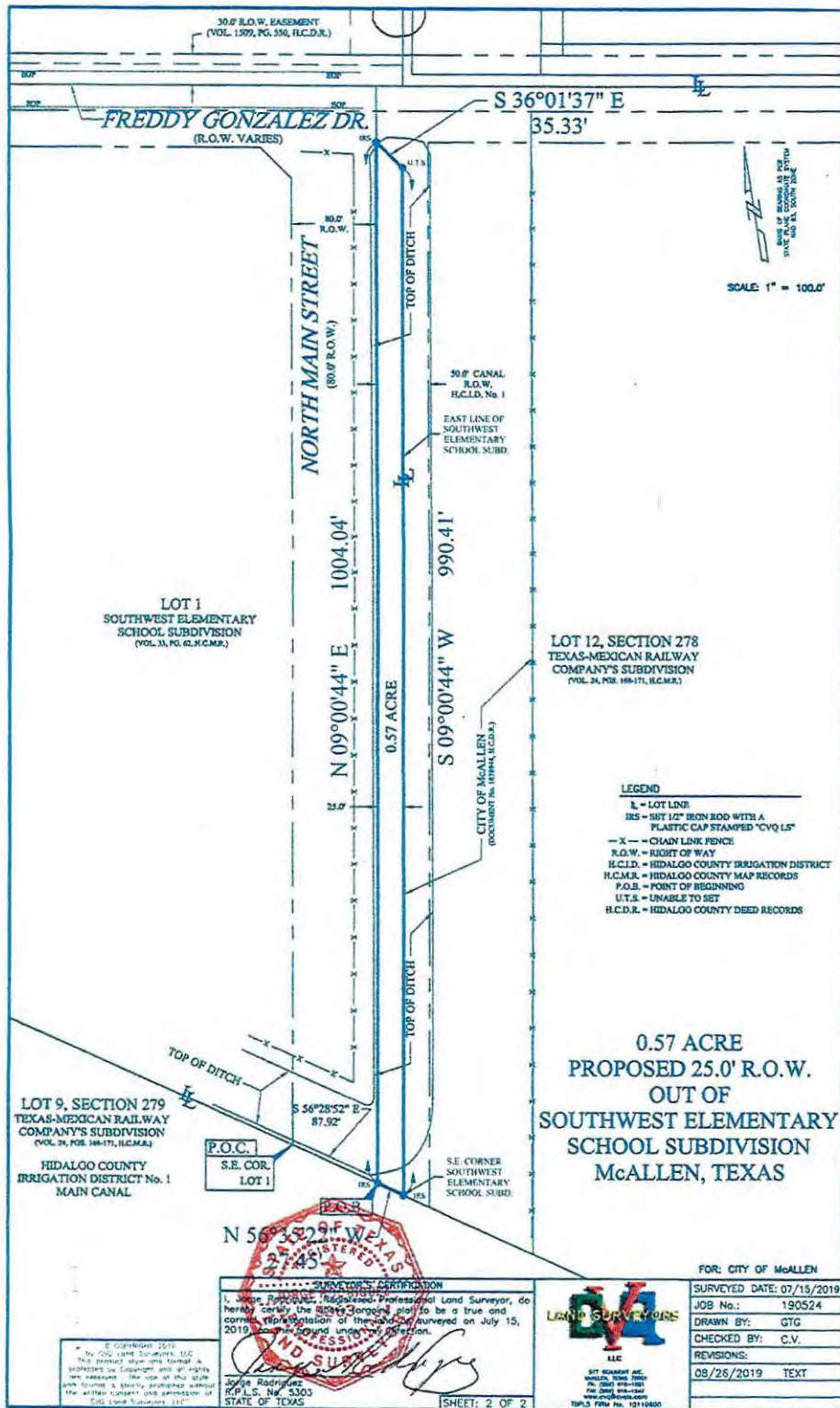
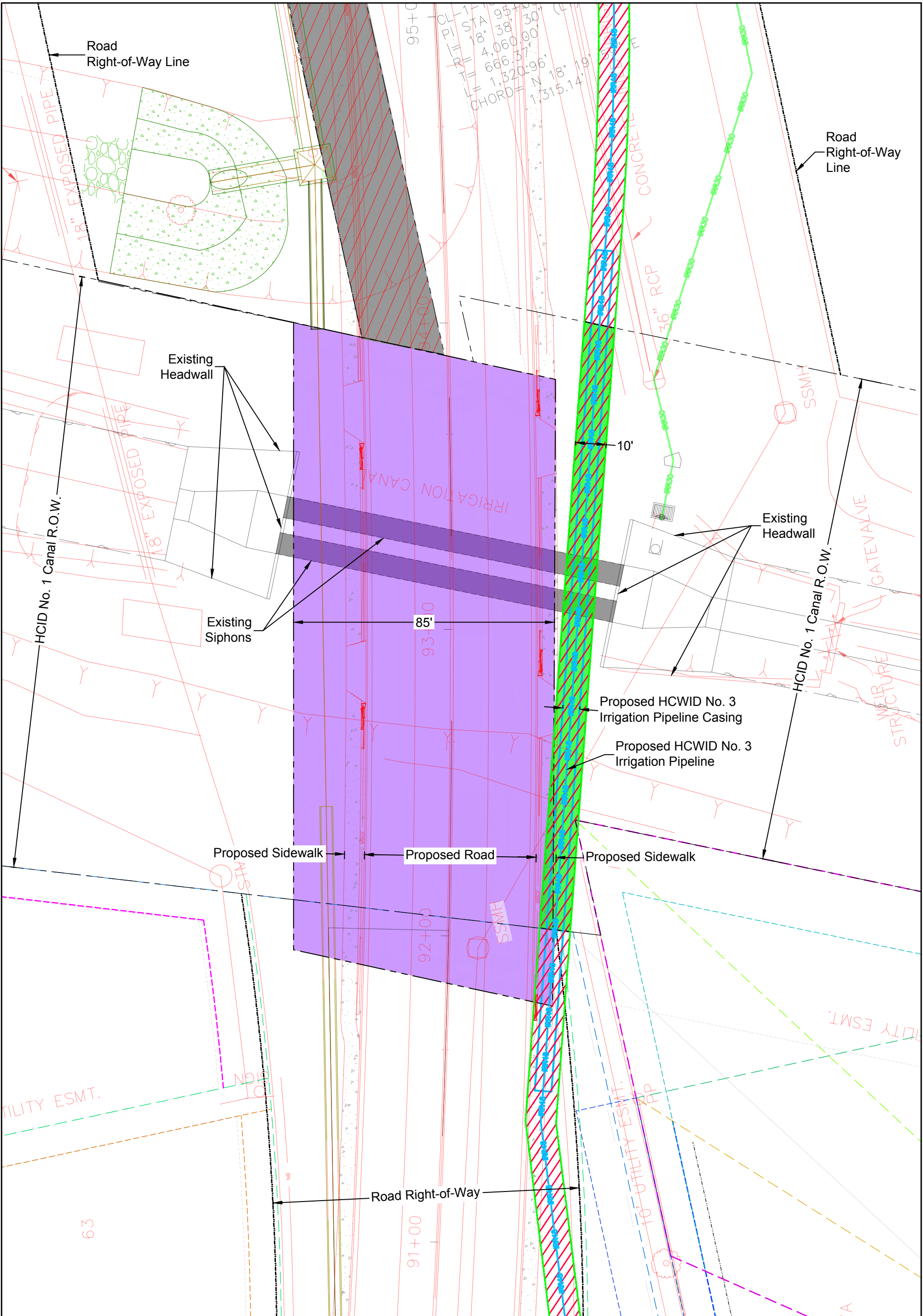


EXHIBIT D






<p>LEGEND</p> <p> HCWID No. 3 Condemnation tract at HCID No. 1 crossing.</p> <p> Easement conveyed by HCID No. 1 to City of McAllen</p> <p> Easement conveyed by City of McAllen to HCWID No. 3.</p>	<p>This exhibit is for District review and information purposes only. NOT A SURVEY. NOT FOR RECORD. Prepared under the supervision of Frank A. Ferris, P.E., 70724.</p>	<p>Hidalgo County Water Improvement District No. 3 Bicentennial Boulevard Extension</p> <p>EASEMENTS AT HCID No. 1 EXHIBIT</p> <p>FERRIS, FLINN & MEDINA, LLC</p> <p>ENGINEERS SURVEYORS 1405 N. STUART PLACE ROAD PALM VALLEY, TEXAS 78552 PHONE (956) 364-2236 FAX (956) 364-1023 TEXAS BOARD OF PROFESSIONAL LAND SURVEYING FIRM REGISTRATION NO. 100370-00 TEXAS BOARD OF PROFESSIONAL ENGINEERS FIRM REGISTRATION NO. F-897</p> <p>SCALE: 1"=30' DRAWN BY: A.V. 06/18/2020 JOB NO: 142-040</p>
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EXHIBIT D-5



EXHIBIT D-7



EXHIBIT D-8



EXHIBIT D-9



EXHIBIT D-10

From: Ricardo Lizcano <ricardo.lizcano@co.hidalgo.tx.us>

Sent: Monday, August 24, 2020 10:17 AM

To: dgurwitz@atlashall.com; Frank Weathered <frank@weatheredlaw.com>; banderson@jw.com; chagofuentes@rkwlaw.com

Cc: ramirez, aida <aida.ramirez@co.hidalgo.tx.us>; lizcano, ricardo <ricardo.lizcano@co.hidalgo.tx.us>

Subject: RE: CCD-0517-D; Hidalgo County Water Improvement District No. 3 vs. Hidalgo County Irrigation District No. 1, County Court at Law No. 4, Hidalgo County, Texas

Dear Counsel, I was instructed to provide you with a response from the Hon. Fred Garza, Jr., County Court at Law No. 4, Hidalgo County, Texas on the above-referenced matter. The message is as follows:

"This case is dismissed due to the fact that this Court ruled that it has no subject matter jurisdiction. Therefore, the Court will not grant any further relief requested by any party."

Judge Fred Garza, Jr.
County Court at Law No. 4

Sincerely,

Ricardo "Rick" Lizcano, Bailiff
County Court at Law No. 4
100 North Closner Blvd.
Edinburg, Texas 78539
(956) 318-2390

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Mel Galvan on behalf of Frank Weathered
Bar No. 20998600
mel@dcklawyers.com
Envelope ID: 45768961
Status as of 8/28/2020 8:10 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Frank Edward Weathered	20998600	frank@weatheredlaw.com	8/27/2020 4:55:43 PM	SENT
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Warren Anderson	24055106	banderson@jw.com	8/27/2020 4:55:43 PM	SENT
Daniel G. Gurwitz	787608	dgurwitz@atlashall.com	8/27/2020 4:55:43 PM	SENT
Mel Galvan		Mel@dcklawyers.com	8/27/2020 4:55:43 PM	SENT

Associated Case Party: Hidalgo County Irrigation District No. 1

Name	BarNumber	Email	TimestampSubmitted	Status
Allison Boyle	24087197	aboyle@atlashall.com	8/27/2020 4:55:43 PM	SENT
Meredith Helle	24106188	mlarson@atlashall.com	8/27/2020 4:55:43 PM	SENT